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

# FORM 10-Q

**(Mark One)**

x **QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
**For the quarterly period ended February 28, 2013**

**OR**

o **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934**
**For the transition period from to**

**Commission file number 1-10658**

# Micron Technology, Inc.
**(Exact name of registrant as specified in its charter)**

| **Delaware** | **75-1618004** |
|---|---|
| (State or other jurisdiction of incorporation or organization) | (IRS Employer Identification No.) |
| **8000 S. Federal Way, Boise, Idaho** | **83716-9632** |
| (Address of principal executive offices) | (Zip Code) |
| Registrant's telephone number, including area code | **(208) 368-4000** |

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 x No o

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

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

| | |
|---|---|
| Large Accelerated Filer x | Accelerated Filer o |
| Non-Accelerated Filer o (Do not check if a smaller reporting company) | Smaller Reporting Company o |

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

The number of outstanding shares of the registrant's common stock as of April 2, 2013, was 1,030,104,505.

# PART I. FINANCIAL INFORMATION

## ITEM 1. FINANCIAL STATEMENTS

**MICRON TECHNOLOGY, INC.**

**CONSOLIDATED STATEMENTS OF OPERATIONS**
(in millions except per share amounts)
(Unaudited)

| | Quarter Ended | | Six Months Ended | |
|---|---|---|---|---|
| | February 28, 2013 | March 1, 2012 | February 28, 2013 | March 1, 2012 |
| Net sales | $ 2,078 | $ 2,009 | $ 3,912 | $ 4,099 |
| Cost of goods sold | 1,712 | 1,799 | 3,329 | 3,584 |
| Gross margin | 366 | 210 | 583 | 515 |
| | | | | |
| Selling, general and administrative | 123 | 174 | 242 | 325 |
| Research and development | 214 | 222 | 438 | 452 |
| Other operating (income) expense, net | 52 | 18 | 23 | 13 |
| Operating loss | (23) | (204) | (120) | (275) |
| | | | | |
| Interest income | 3 | 2 | 6 | 4 |
| Interest expense | (56) | (35) | (113) | (70) |
| Other non-operating income (expense), net | (159) | 37 | (218) | 26 |
| | (235) | (200) | (445) | (315) |
| | | | | |
| Income tax (provision) benefit | 9 | (9) | (4) | (7) |
| Equity in net loss of equity method investees | (58) | (73) | (110) | (147) |
| Net loss | (284) | (282) | (559) | (469) |
| | | | | |
| Net income attributable to noncontrolling interests | (2) | — | (2) | — |
| Net loss attributable to Micron | $ (286) | $ (282) | $ (561) | $ (469) |
| | | | | |
| Loss per share: | | | | |
| Basic | $ (0.28) | $ (0.29) | $ (0.55) | $ (0.48) |
| Diluted | (0.28) | (0.29) | (0.55) | (0.48) |
| | | | | |
| Number of shares used in per share calculations: | | | | |
| Basic | 1,016.0 | 982.8 | 1,014.9 | 982.1 |
| Diluted | 1,016.0 | 982.8 | 1,014.9 | 982.1 |

*See accompanying notes to consolidated financial statements.*

**MICRON TECHNOLOGY, INC.**

**CONSOLIDATED STATEMENTS OF COMPREHENSIVE INCOME**
(in millions)
(Unaudited)

| | Quarter Ended | | Six Months Ended | |
|---|---|---|---|---|
| | February 28, 2013 | March 1, 2012 | February 28, 2013 | March 1, 2012 |
| Net loss | $ (284) | $ (282) | $ (559) | $ (469) |
| Other comprehensive income (loss), net of tax: | | | | |
| Foreign currency translation adjustments | 2 | 2 | 9 | (19) |
| Gain (loss) on derivatives, net | (3) | (4) | (8) | (15) |
| Gain (loss) on investments, net | (3) | (32) | (1) | (30) |
| Pension liability adjustments | — | — | (1) | — |
| Other comprehensive loss | (4) | (34) | (1) | (64) |
| Total comprehensive loss | (288) | (316) | (560) | (533) |
| Comprehensive (income) loss attributable to noncontrolling interests | (2) | 1 | (2) | — |
| Comprehensive loss attributable to Micron | $ (290) | $ (315) | $ (562) | $ (533) |

*See accompanying notes to consolidated financial statements.*

**MICRON TECHNOLOGY, INC.**

**CONSOLIDATED BALANCE SHEETS**
(in millions except par value amounts)
(Unaudited)

| As of | February 28, 2013 | August 30, 2012 |
|---|---|---|
| **Assets** | | |
| Cash and equivalents | $ 2,061 | $ 2,459 |
| Short-term investments | 167 | 100 |
| Receivables | 1,226 | 1,289 |
| Inventories | 1,721 | 1,812 |
| Other current assets | 189 | 98 |
| Total current assets | 5,364 | 5,758 |
| Long-term marketable investments | 546 | 374 |
| Property, plant and equipment, net | 6,973 | 7,103 |
| Equity method investments | 291 | 389 |
| Intangible assets, net | 346 | 371 |
| Other noncurrent assets | 392 | 333 |
| Total assets | $ 13,912 | $ 14,328 |
| | | |
| **Liabilities and equity** | | |
| Accounts payable and accrued expenses | $ 1,498 | $ 1,641 |
| Deferred income | 207 | 248 |
| Equipment purchase contracts | 62 | 130 |
| Current portion of long-term debt | 350 | 224 |
| Total current liabilities | 2,117 | 2,243 |
| Long-term debt | 3,301 | 3,038 |
| Other noncurrent liabilities | 534 | 630 |
| Total liabilities | 5,952 | 5,911 |
| | | |
| Commitments and contingencies | | |
| | | |
| Micron shareholders' equity: | | |
| Common stock, $0.10 par value, 3,000 shares authorized, 1,026.6 shares issued and outstanding (1,017.7 as of August 30, 2012) | 103 | 102 |
| Additional capital | 9,012 | 8,920 |
| Accumulated deficit | (1,963) | (1,402) |
| Accumulated other comprehensive income | 79 | 80 |
| Total Micron shareholders' equity | 7,231 | 7,700 |
| Noncontrolling interests in subsidiaries | 729 | 717 |
| Total equity | 7,960 | 8,417 |
| Total liabilities and equity | $ 13,912 | $ 14,328 |

*See accompanying notes to consolidated financial statements.*

**MICRON TECHNOLOGY, INC.**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**
(in millions)
(Unaudited)

| Six Months Ended | February 28, 2013 | March 1, 2012 |
|---|---|---|
| **Cash flows from operating activities** | | |
| Net loss | $ (559) | $ (469) |
| Adjustments to reconcile net loss to net cash provided by operating activities: | | |
| Depreciation expense and amortization of intangible assets | 912 | 1,133 |
| Amortization of debt discount and other costs | 58 | 34 |
| Losses from currency hedges, net | 173 | 18 |
| Equity in net loss of equity method investees | 110 | 147 |
| Loss on impairment of MIT assets | 62 | — |
| Stock-based compensation | 40 | 50 |
| Loss on extinguishment of debt | 31 | — |
| Change in operating assets and liabilities: | | |
| Receivables | (3) | 225 |
| Inventories | 27 | (1) |
| Accounts payable and accrued expenses | (189) | (40) |
| Customer prepayments | (63) | (1) |
| Deferred income | (36) | (74) |
| Other | (93) | (44) |
| Net cash provided by operating activities | 470 | 978 |
| | | |
| **Cash flows from investing activities** | | |
| Expenditures for property, plant and equipment | (761) | (1,089) |
| Purchases of available-for-sale securities | (430) | — |
| Loan to Inotera | — | (133) |
| Proceeds from sales and maturities of available-for-sale securities | 198 | 41 |
| Proceeds from sales of property, plant and equipment | 14 | 48 |
| Other | (20) | (50) |
| Net cash used for investing activities | (999) | (1,183) |
| | | |
| **Cash flows from financing activities** | | |
| Proceeds from issuance of debt | 812 | — |
| Proceeds from equipment sale-leaseback transactions | 73 | 340 |
| Cash received for capped call transactions | 24 | — |
| Cash received from noncontrolling interests | 10 | 138 |
| Repayments of debt | (587) | (101) |
| Payments on equipment purchase contracts | (130) | (86) |
| Cash paid for capped call transactions | (48) | — |
| Distributions to noncontrolling interests | — | (147) |
| Other | (23) | (5) |
| Net cash provided by financing activities | 131 | 139 |
| | | |
| Net decrease in cash and equivalents | (398) | (66) |
| Cash and equivalents at beginning of period | 2,459 | 2,160 |
| Cash and equivalents at end of period | $ 2,061 | $ 2,094 |
| | | |
| **Noncash investing and financing activities:** | | |
| Equipment acquisitions on contracts payable and capital leases | $ 209 | $ 533 |

*See accompanying notes to consolidated financial statements.*

## Business and Basis of Presentation

Micron Technology, Inc. and its consolidated subsidiaries (hereinafter referred to collectively as "we," "our," "us" and similar terms unless the context indicates otherwise) is one of the world's leading providers of advanced semiconductor solutions. Through our worldwide operations, we manufacture and market a full range of DRAM, NAND Flash and NOR Flash memory, as well as other innovative memory technologies, packaging solutions and semiconductor systems for use in leading-edge computing, consumer, networking, automotive, industrial, embedded and mobile products. The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America consistent in all material respects with those applied in our Annual Report on Form 10-K for the year ended August 30, 2012. In the opinion of our management, the accompanying unaudited consolidated financial statements contain all adjustments necessary to present fairly our consolidated financial position and our consolidated results of operations, comprehensive income and cash flows.

Certain reclassifications have been made to prior period amounts to conform to current period presentation. In the second quarter of 2013, we reclassified gains and losses from changes in currency exchange rates in order to improve comparability with our industry peers. As a result of the reclassification, $59 million of losses for the first quarter of 2013 and $2 million and $13 million of losses for the second quarter and first six months of 2012, respectively, were reclassified from the amounts previously reported in other operating (income) expense, net to other non-operating income (expense), net.

Our fiscal year is the 52 or 53-week period ending on the Thursday closest to August 31. Our second quarters of fiscal 2013 and 2012 ended on February 28, 2013 and March 1, 2012, respectively. All period references are to our fiscal periods unless otherwise indicated. These interim financial statements should be read in conjunction with the consolidated financial statements and accompanying notes included in our Annual Report on Form 10-K for the year ended August 30, 2012.

## Variable Interest Entities

We have interests in entities that are Variable Interest Entities ("VIEs"). If we are the primary beneficiary of a VIE, we are required to consolidate it. To determine if we are the primary beneficiary, we evaluate whether we have the power to direct the activities that most significantly impact the VIE's economic performance and the obligation to absorb losses or the right to receive benefits of the VIE that could potentially be significant to the VIE. Our evaluation includes identification of significant activities and an assessment of our ability to direct those activities based on governance provisions and arrangements to provide or receive product and process technology, product supply, operations services, equity funding, financing and other applicable agreements and circumstances. Our assessments of whether we are the primary beneficiary of our VIEs require significant assumptions and judgments.

**Unconsolidated Variable Interest Entities**

***Inotera:*** Inotera Memories, Inc. ("Inotera") is a VIE because its equity is not sufficient to permit it to finance its activities without additional support from its shareholders. In the second quarter of 2013, we entered into agreements with Nanya Technology Corporation ("Nanya") and Inotera to amend the joint venture relationship involving Inotera. The amendments include a new supply agreement between us and Inotera. We have determined that we do not have the power to direct the activities of Inotera that most significantly impact its economic performance, primarily due to (1) limitations on our governance rights that require the consent of other parties for key operating decisions and (2) Inotera's dependence on Nanya for financing and the ability to operate in Taiwan. Therefore, we do not consolidate Inotera and we account for our interest under the equity method.

***Transform:*** Transform Solar Pty Ltd. ("Transform") is a VIE because its equity is not sufficient to permit it to finance its activities without additional financial support from us or its parent, Origin Energy Limited ("Origin"). We have determined that we do not have the power to direct the activities of Transform that most significantly impact its economic performance, primarily due to limitations on our governance rights that require the consent of Origin for key operating decisions. Therefore, we do not consolidate Transform and we account for our interest under the equity method. In May 2012, the Board of Directors of Transform approved a liquidation plan. As of August 30, 2012, Transform's operations were substantially discontinued.

For further information regarding our VIEs that we account for under the equity method, see "Equity Method Investments" note.

***EQUVO Entities:*** EQUVO HK Limited and EQUVA Capital 1 Pte. Ltd. (together, the "EQUVO Entities") are special purpose entities created to facilitate equipment sale-leaseback financing transactions between us and a consortium of financial institutions. Neither we nor the financial institutions have an equity interest in the EQUVO Entities. The EQUVO Entities are VIEs because their equity is not sufficient to permit them to finance their activities without additional support from the financial institutions and because the third-party equity holder lacks characteristics of a controlling financial interest. By design, the arrangement with the EQUVO Entities is merely a financing vehicle and we do not bear any significant risks from variable interests with the EQUVO Entities. Therefore, we have determined that we do not have the power to direct the activities of the EQUVO Entities that most significantly impact their economic performance and we do not consolidate the EQUVO Entities.

**Consolidated Variable Interest Entities**

***IMFT:*** IM Flash Technologies, LLC ("IMFT") is a VIE because all of its costs are passed to us and its other member, Intel Corporation ("Intel"), through product purchase agreements and IMFT is dependent upon us or Intel for any additional cash requirements. We determined that we have the power to direct the activities of IMFT that most significantly impact its economic performance. The primary activities of IMFT are driven by the constant introduction of product and process technology. Because we perform a significant majority of the technology development, we have the power to direct its key activities. In addition, IMFT manufactures certain products exclusively for us using our technology. We also determined that we have the obligation to absorb losses and the right to receive benefits from IMFT that could potentially be significant to it. Therefore, we consolidate IMFT.

***MP Mask:*** MP Mask Technology Center, LLC ("MP Mask") is a VIE because substantially all of its costs are passed to us and its other member, Photronics, Inc. ("Photronics"), through product purchase agreements and MP Mask is dependent upon us or Photronics for any additional cash requirements. We determined that we have the power to direct the activities of MP Mask that most significantly impact its economic performance, primarily because (1) of our tie-breaking voting rights over key operating decisions and (2) nearly all key MP Mask activities are driven by our supply needs. We also determined that we have the obligation to absorb losses and the right to receive benefits from MP Mask that could potentially be significant to it. Therefore, we consolidate MP Mask.

For further information regarding our consolidated VIEs, see "Consolidated Variable Interest Entities" note.

## Proposed Acquisition of Elpida Memory, Inc.

On July 2, 2012, we entered into an "Agreement on Support for Reorganization Companies" (the "Sponsor Agreement") with the trustees of Elpida Memory, Inc. ("Elpida") and its subsidiary, Akita Elpida Memory, Inc. ("Akita" and, together with Elpida, the "Elpida Companies"), which provides for, among other things, our acquisition of Elpida and our support for the plans of reorganization of the Elpida Companies in connection with their corporate reorganization proceedings in Japan. The Elpida Companies filed petitions for commencement of corporate reorganization proceedings with the Tokyo District Court (the "Japan Court") under the Corporate Reorganization Act of Japan on February 27, 2012 (the "Japan Proceeding"). On March 23, 2012, the Japan Court issued an order to commence the Japan Proceeding. Elpida filed a Verified Petition for Recognition and Chapter 15 Relief (the "U.S. Proceeding") in the United States Bankruptcy Court for the District of Delaware (the "U.S. Court") on March 19, 2012 and, on April 24, 2012, the U.S. Court entered an order that, among other things, recognized the Japan Proceeding as a foreign main proceeding pursuant to 11 U.S.C. § 1517(b). On February 26, 2013, the Elpida Companies' creditors approved the reorganization plans and on February 28, 2013, the Japan Court issued an order approving the plans of reorganization. On March 29, 2013, certain creditors of Elpida filed appeals with the Tokyo High Court of the Japan Court's order approving Elpida's plan of reorganization.

In a related transaction, on July 2, 2012, we entered into a share purchase agreement (the "Rexchip Share Purchase Agreement") with Powerchip Technology Corporation, a Taiwanese corporation ("Powerchip"), and certain of its affiliates (collectively, the "Powerchip Group") to acquire the Powerchip Group's 24% share of Rexchip Electronics Corporation ("Rexchip"), a manufacturing joint venture formed by Elpida and Powerchip. For more information about the acquisition of the Rexchip shares from the Powerchip Group, see "Rexchip Share Purchase Agreement" below. Elpida currently owns, directly and indirectly through a subsidiary, 65% of Rexchip's outstanding common stock. As a result, if the transactions contemplated by the Sponsor Agreement and the Rexchip Share Purchase Agreement are completed, we will own 100% of Elpida and, directly or indirectly through one or more of our subsidiaries, 89% of Rexchip.

Elpida's assets include, among other things: a 300mm DRAM wafer fabrication facility located in Hiroshima, Japan; its ownership interest in Rexchip, whose assets include a 300mm DRAM wafer fabrication facility located in Taiwan; and an assembly and test facility located in Akita, Japan.

Elpida's semiconductor memory products include Mobile DRAM, targeted toward mobile phones and tablets. We believe that combining the complementary product portfolios of Micron and Elpida will strengthen our position in the memory market and enable us to provide customers with a wider portfolio of high-quality solutions. We also believe that the Elpida transactions will strengthen our market position in the memory industry through increased research and development and manufacturing scale, improved access to core memory market segments, and additional wafer capacity to balance among our DRAM, NAND Flash and NOR Flash memory solutions. There can be no assurance that we will be able to successfully consummate the transactions described above.

**Elpida Sponsor Agreement**

Under the Sponsor Agreement, we committed to support plans of reorganization for the Elpida Companies that would provide for payments by the Elpida Companies to their secured and unsecured creditors in an aggregate amount of 200 billion yen (or the equivalent of approximately $2.17 billion, assuming approximately 92 yen per U.S. dollar, the exchange rate as of February 28, 2013), less certain expenses of the reorganization proceedings and certain other items.

The Sponsor Agreement provides that we will invest 60 billion yen (or the equivalent of approximately $650 million) in cash in Elpida at the closing in exchange for 100% ownership of Elpida's equity. As a condition to the execution of the Sponsor Agreement, we deposited 1.8 billion yen (or the equivalent of approximately $20 million) into an escrow account in July 2012, which will be applied towards our purchase price for the Elpida shares at closing. The Elpida Companies will use the proceeds of our investment to fund an initial installment payment to their creditors of 60 billion yen, which amount is subject to reduction for certain items specified in the Sponsor Agreement. The initial installment payment will be made within three months following the closing of our acquisition of Elpida. The remaining 140 billion yen (or the equivalent of approximately $1.52 billion) of installment payments payable to the Elpida Companies' creditors will be made by the Elpida Companies in six annual installments payable at the end of each calendar year beginning in the calendar year after the first installment payment is made. We or one of our subsidiaries are committed to enter into a supply agreement with Elpida following the closing, which will provide for our purchase on a cost-plus basis of all product produced by Elpida. Cash flows from such supply agreement will be used to satisfy the required installment payments under the plans of reorganization. Although certain key parameters of the supply agreement have been agreed to with Elpida, the detailed terms have not been completed, and the final terms will be subject to Japan Court approval.

The Sponsor Agreement contains certain termination rights, including (i) in the event of a material adverse change affecting either Elpida and its subsidiaries or Rexchip disproportionate to industry trends or (ii) if our acquisition of Elpida has not closed by January 2, 2014, which date may be extended six months under certain limited circumstances.

The consummation of the Sponsor Agreement remains subject to completion or waiver of certain conditions, including:

i. the finalization of the order of the Japan Court approving the plans of reorganization of the Elpida Companies, which order with respect to the Elpida plan of reorganization has been appealed by certain creditors of Elpida. On February 26, 2013, the Elpida Companies' creditors approved the reorganization plans and on February 28, 2013, the Japan Court issued an order approving the plans of reorganization. On March 29, 2013, certain creditors of Elpida filed appeals with the Tokyo High Court of the Japan Court's order approving Elpida's plan of reorganization. Timing of the Tokyo High Court appeal process depends on a number of factors outside of our control and is impossible to predict with accuracy;

ii. the granting of a recognition order by the U.S. Court with respect to the Japan Court's approval of the Elpida plan of reorganization or the completion or implementation of alternative actions providing substantially equivalent benefits; and

iii. the closing of the purchase of the Rexchip shares from the Powerchip Group under the Rexchip Share Purchase Agreement described below.

There can be no assurance that the various conditions will be satisfied or that the Elpida acquisition will ultimately be consummated on the terms and conditions set forth in the Sponsor Agreement. Various creditors are challenging Elpida's proposed plan of reorganization and related requests for relief, both in the Japan Proceedings and the U.S. Proceedings. If the requisite court approvals and decisions are not obtained or the closing conditions are not satisfied or waived, we will not be able to close the acquisitions.

**Summary Description of the Proposed Plans of Reorganization**

Pursuant to the Sponsor Agreement, the trustees of the Elpida Companies prepared proposed plans of reorganization for Elpida and Akita, which plans set forth the treatment of the Elpida Companies' pre-petition creditors and their claims utilizing the support contemplated by the Sponsor Agreement. Generally, Elpida's proposed plan of reorganization provides that secured creditors will recover 100% of the amount of their fixed claims, whereas unsecured creditors will recover at least 17.4% of the amount of their fixed claims. Under certain circumstances, the amounts recoverable by unsecured creditors may exceed 17.4% of their fixed claims. The remaining portion of the unsecured claims will be discharged, without payment, over the period that payments are made pursuant to the plans of reorganization. The creditors will be paid by Elpida in installments, with the first installment payment to occur within three months after the closing of Micron's acquisition of Elpida. The remaining installment payments will occur on the last business day of each year over a six-year period beginning the year after the first installment payment is made. The secured creditors will be paid in full on or before the sixth installment payment date, while the unsecured creditors will be paid in seven installments. To the extent any claims remain unfixed as of the seventh installment payment date, an additional payment will be made to unsecured creditors once the remaining claims are finally fixed to the extent the remaining reserve exceeds the amounts payable with respect to the fixed claims. Akita's proposed plan of reorganization provides that secured creditors will recover 100% of the amount of their claims, whereas unsecured creditors will recover 19% of the amount of their claims. The secured creditors will be paid in full on the first installment payment date, while the unsecured creditors will be paid in seven installments.

The initial installment payment to be made by the Elpida Companies pursuant to the proposed plans of reorganization is 60 billion yen (or the equivalent of approximately $650 million), which amount is subject to reduction for certain items specified in the Sponsor Agreement. The Elpida Companies will use the proceeds of Micron's investment at the closing of the Elpida acquisition to fund the initial installment payment. The remaining 140 billion yen (or the equivalent of approximately $1.52 billion) of installment payments will be made by the Elpida Companies in six annual installments, with payments of 20 billion yen (or the equivalent of approximately $217 million) in each of the first four annual installment payments, and payments of 30 billion yen (or the equivalent of approximately $325 million) in each of the final two annual installment payments. Cash flows from the cost-plus supply agreement described above will be used to satisfy the second through seventh installment payments under the proposed plans of reorganization.

Certain contingency matters related to the Elpida Companies, which are primarily comprised of outstanding litigation claims, were not treated as fixed claims under the proposed plans of reorganization at the time the plans were filed with the Japan Court. A portion of each installment amount payable to the creditors of the Elpida Companies will be reserved in the event that any of these matters become fixed claims, in which case the fixed claims will be paid under the plans of reorganization in the same manner as the fixed claims of other creditors. To the extent the aggregate amounts reserved from the installment payments exceed the aggregate amounts payable with respect to these unfixed claims once they become fixed, the excess amounts reserved will be distributed to unsecured creditors with respect to their fixed claims, resulting in an increased recovery for the unsecured creditors out of the installment payments. To the extent the aggregate amounts reserved is less than the aggregate amounts payable with respect to these unfixed claims once they become fixed, the Elpida Companies would be responsible to fund any shortfall to ensure that the creditors receive the recovery to which they are entitled under the plans of reorganization with respect to these claims. As a result, there is a possibility that the total amount payable by the Elpida Companies to their creditors under the plans of reorganization will exceed 200 billion yen, as adjusted. In addition, if these unfixed claims are resolved pursuant to settlement arrangements or other post-petition agreements, a substantial portion of the amounts payable with respect to the claims may have to be funded by the Elpida Companies outside of the installment payments provided for by the plans of reorganization.

**Micron Credit Support Arrangements with respect to the Elpida Companies**

Pursuant to the Sponsor Agreement we agreed, subject to certain conditions, to provide certain support to Elpida with respect to obtaining financing for working capital purposes and capital expenditures. This support included a commitment to use reasonable best efforts to assist Elpida with the extension or replacement of Elpida's then existing working capital credit facility through the closing of the Elpida acquisition, which assistance may include the provision of a payment guarantee by us under certain circumstances. Under the Sponsor Agreement, we also agreed, subject to certain conditions, to use reasonable best efforts to assist the Elpida Companies in financing up to 64 billion yen (or the equivalent of approximately $694 million) of eligible capital expenditures incurred through June 30, 2014, including up to 40 billion yen (or the equivalent of approximately $434 million) incurred prior to June 30, 2013, which may include us providing payment guarantees of third party financing under certain circumstances or direct financial support from Micron or one of its subsidiaries.

As of February 28, 2013, we have provided payment guarantees related to financing of capital expenditures of 29 million euros (or the equivalent of approximately $38 million) and 6 billion yen (or the equivalent of approximately $65 million). We have also provided a payment guarantee relating to an extension of Elpida's existing working capital credit facility, which provides for aggregate borrowings in the amount of up to 10 billion yen (or the equivalent of approximately $108 million), with an outstanding borrowing as of February 28, 2013 of 8 billion yen (or the equivalent of approximately $87 million). We have entered into an omnibus reimbursement agreement with Elpida in connection with our financial support obligations under the Sponsor Agreement, whereby Elpida and certain of its subsidiaries have agreed, among other things, to reimburse us for any amounts that we are required to pay under or in connection with the payment guarantees. These obligations under the omnibus reimbursement agreement are collateralized by approximately 93% of the Rexchip shares held by Elpida and one of its subsidiaries. In the event we are required to make any payments to Elpida's lenders under the guarantees, our rights will be subrogated to those of the lenders, including any rights to exercise remedies with respect to collateral securing the underlying loans. Failure to close the Elpida acquisition would not relieve us of our obligations under the foregoing payment guarantees. Under the Sponsor Agreement, certain conditions require Elpida's cash balances to be below a certain level in order for capital expenditure financing support to be available to Elpida. As of February 28, 2013, these conditions were not satisfied. As a result, we will not be obligated to provide any such further support unless and until such conditions, as well as all other applicable conditions, are met.

**Rexchip Share Purchase Agreement**

On July 2, 2012, we entered into the Rexchip Share Purchase Agreement with the Powerchip Group, under which we will purchase approximately 714 million shares of Rexchip common stock, which represents approximately 24% of Rexchip's outstanding common stock, for approximately 10 billion New Taiwan dollars (or the equivalent of approximately $338 million, assuming approximately 30 New Taiwan dollars per U.S. dollar, the exchange rate as of February 28, 2013). The consummation of the Rexchip Share Purchase Agreement is subject to various closing conditions, including the closing of the transactions contemplated by the Sponsor Agreement. At the closing of the Sponsor Agreement and the Rexchip Share Purchase Agreement, our aggregate beneficial ownership interest in Rexchip will approximate 89%.

**Currency Hedging**

***Elpida Hedges:*** On July 2, 2012, we executed a series of separate currency exchange transactions pursuant to which we purchased call options to buy 200 billion yen with a weighted-average strike price of 79.15 (yen per U.S. dollar). In addition, to reduce the cost of these call options, we sold put options to sell 100 billion yen with a strike price of 83.32 and we sold call options to buy 100 billion yen with a strike price of 75.57. As a result of the mark-to-market adjustments for the hedge, we recorded losses to other non-operating expense of $114 million and $176 million in the second quarter and first six months of 2013, respectively. As of February 28, 2013, our cumulative loss on the hedge was $168 million. In the third quarter of 2013, we recorded additional losses of $23 million on the initial hedge through its settlement on March 26, 2013. We paid $191 million on settlement. As a result of the weaker yen since the inception of the hedge on July 2, 2012, the U.S. dollar equivalent of the 200 billion yen to be paid to the secured and unsecured creditors of the Elpida Companies had decreased by $338 million as of February 28, 2013.

On March 26, 2013, we executed a series of separate currency exchange transactions to hedge our exposure to the yen-denominated acquisition payments pursuant to which we entered into below market forward contracts to buy 80 billion yen with a weighted-average price of 91.00 (yen per U.S. dollar) and purchased put options to sell 80 billion yen with a weighted-average strike price of 94.24. These forward contracts and put options, which expire on September 25, 2013, mitigate the risk of a strengthening yen for certain of our yen-denominated payments under the Sponsor Agreement while preserving some ability for us to benefit if the value of the yen weakens relative to the U.S. dollar.

The forward and option contracts detailed above were not designated for hedge accounting and are remeasured at fair value each period with gains and losses reflected in our results of operations.

***Rexchip Hedges:*** On July 25, 2012, we executed a series of separate currency exchange transactions pursuant to which we purchased call options to buy 10 billion New Taiwan dollars with a weighted-average strike price of 29.21 (New Taiwan dollar per U.S. dollar). These options expired on April 2, 2013 and we paid $3 million on settlement. These option contracts were not designated for hedge accounting and were remeasured at fair value each period with gains and losses reflected in our results of operations.

## Micron Technology Italia, S.r.l.

On February 25, 2013, we entered into an agreement to sell Micron Technology Italia, S.r.l., ("MIT") a wholly-owned subsidiary, including its 200mm wafer fabrication facility assets in Avezzano, Italy, to LFoundry Marsica S.r.l. ("LFoundry"). As consideration for the shares of MIT, we expect to receive a long-term note from LFoundry. Under the agreements, we will assign to LFoundry our supply agreement with Aptina Imaging Corporation ("Aptina") for CMOS image sensors manufactured at the Avezzano facility. We expect to close the transaction in the third quarter of 2013.

The assets and liabilities of MIT, and related imager inventories, were classified as held for sale in the second quarter of 2013 and were written down to their estimated fair values. The fair value was determined primarily based on the expected proceeds from the sale to LFoundry (Level 3 fair value measurements). In connection therewith, in the second quarter of 2013, we recorded an estimated impairment loss of $62 million in other operating expense. As of February 28, 2013, the assets and liabilities held for sale consisted primarily of inventories; property, plant and equipment; accounts payable and accrued expenses and pension obligations and were presented in our consolidated balance sheet as follows:

| As of | February 28, 2013 |
|---|---|
| Other current assets | $ 73 |
| Other noncurrent assets | 37 |
| Accounts payable and accrued expenses | (40) |
| Other noncurrent liabilities | (34) |
| | $ 36 |

## Investments

As of February 28, 2013 and August 30, 2012, available-for-sale investments, including cash equivalents, were as follows:

| As of | February 28, 2013 | | | | August 30, 2012 | | | |
|---|---|---|---|---|---|---|---|---|
| | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value | Amortized Cost | Gross Unrealized Gains | Gross Unrealized Losses | Fair Value |
| Money market funds | $ 1,634 | $ — | $ — | $ 1,634 | $ 2,159 | $ — | $ — | $ 2,159 |
| Corporate bonds | 360 | 1 | — | 361 | 233 | 1 | — | 234 |
| Government securities | 220 | — | — | 220 | 144 | — | — | 144 |
| Asset-backed securities | 111 | — | — | 111 | 77 | — | — | 77 |
| Certificates of deposit | 93 | — | — | 93 | 31 | — | — | 31 |
| Commercial paper | 58 | — | — | 58 | 39 | — | — | 39 |
| Marketable equity securities | 10 | — | (1) | 9 | 10 | — | — | 10 |
| | $ 2,486 | $ 1 | $ (1) | $ 2,486 | $ 2,693 | $ 1 | $ — | $ 2,694 |

As of February 28, 2013, no available-for-sale security had been in a loss position for longer than 12 months.

The table below presents the amortized cost and fair value of available-for-sale debt securities, including cash equivalents, as of February 28, 2013 by contractual maturity:

| | Amortized Cost | Fair Value |
|---|---|---|
| Money market funds not due at a single maturity date | $ 1,634 | $ 1,634 |
| Due in 1 year or less | 306 | 306 |
| Due in 1 - 2 years | 228 | 228 |
| Due in 2 - 4 years | 277 | 278 |
| Due after 4 years | 31 | 31 |
| | $ 2,476 | $ 2,477 |

Net unrealized holding gains reclassified out of accumulated other comprehensive income from sales of available-for-sale securities were not significant for the second quarter or first six months of 2013 and were $34 million for the second quarter of 2012. Proceeds from the sales of available-for-sale securities were $67 million and $160 million for the second quarter and first six months of 2013, respectively, and $41 million for the second quarter of 2012. Gross realized gains from sales of available-for-sale securities were not significant for the second quarter or first six months of 2013 and were $34 million for the second quarter of 2012.

## Receivables

| As of | February 28, 2013 | August 30, 2012 |
|---|---|---|
| Trade receivables (net of allowance for doubtful accounts of $4 and $5, respectively) | $ 998 | $ 933 |
| Income and other taxes | 60 | 80 |
| Related party receivables | 39 | 63 |
| Other | 129 | 213 |
| | $ 1,226 | $ 1,289 |

As of February 28, 2013 and August 30, 2012, related party receivables included $39 million and $62 million, respectively, due from Aptina primarily for sales of image sensors under a wafer supply agreement. (See "Equity Method Investments" note.)

As of February 28, 2013 and August 30, 2012, other receivables included $2 million and $63 million, respectively, from our currency hedges. As of February 28, 2013 and August 30, 2012, other receivables included $39 million and $34 million, respectively, due from Intel for amounts related to NAND Flash and certain emerging memory technologies product design and process development activities under cost-sharing agreements. As of August 30, 2012, other receivables also included $17 million due from Nanya for amounts related to DRAM product design and process development activities under a cost-sharing agreement. (See "Derivative Financial Instruments," "Consolidated Variable Interest Entities" and "Equity Method Investments" notes.)

## Inventories

| As of | February 28, 2013 | August 30, 2012 |
|---|---|---|
| Finished goods | $ 451 | $ 512 |
| Work in process | 1,161 | 1,148 |
| Raw materials and supplies | 109 | 152 |
| | $ 1,721 | $ 1,812 |

## Property, Plant and Equipment

| As of | February 28, 2013 | August 30, 2012 |
|---|---|---|
| Land | $ 90 | $ 92 |
| Buildings | 4,591 | 4,714 |
| Equipment | 15,166 | 15,653 |
| Construction in progress | 55 | 43 |
| Software | 304 | 323 |
| | 20,206 | 20,825 |
| Accumulated depreciation | (13,233) | (13,722) |
| | $ 6,973 | $ 7,103 |

Depreciation expense was $434 million and $871 million for the second quarter and first six months of 2013, respectively, and $547 million and $1,089 million for the second quarter and first six months of 2012, respectively. Other noncurrent assets included buildings, equipment and other assets classified as held for sale of $53 million as of February 28, 2013 and $25 million as of August 30, 2012.

## Equity Method Investments

| As of | February 28, 2013 | | August 30, 2012 | |
|---|---|---|---|---|
| | Investment Balance | Ownership Percentage | Investment Balance | Ownership Percentage |
| Inotera | $ 277 | 39.7% | $ 370 | 39.7% |
| Other | 14 | Various | 19 | Various |
| | $ 291 | | $ 389 | |

We recognize our share of earnings or losses from these entities under the equity method, generally on a two-month lag. Equity in net loss of equity method investees, net of tax, included the following:

| | Quarter Ended | | Six Months Ended | |
|---|---|---|---|---|
| | February 28, 2013 | March 1, 2012 | February 28, 2013 | March 1, 2012 |
| Inotera | $ (55) | $ (56) | $ (108) | $ (119) |
| Other | (3) | (17) | (2) | (28) |
| | $ (58) | $ (73) | $ (110) | $ (147) |

Our maximum exposure to loss from our involvement with our equity method investments that were VIEs was $280 million and primarily included our Inotera investment balance. We may also incur losses in connection with our rights and obligations to purchase substantially all of Inotera's wafer production capacity under a supply agreement with Inotera.

**Inotera**

We have partnered with Nanya in Inotera, a Taiwanese DRAM memory company, since the first quarter of 2009. As of February 28, 2013, we held a 39.7% ownership interest in Inotera, Nanya held a 26.3% ownership interest and the remaining ownership interest was publicly held. As of February 28, 2013, based on the closing trading price of Inotera's shares in an active market, the market value of our equity interest in Inotera was $458 million. As of February 28, 2013 and August 30, 2012, there were gains of $58 million and $49 million, respectively, in accumulated other comprehensive income (loss) for cumulative translation adjustments from our equity investment in Inotera.

The net carrying value of our initial and subsequent investments was less than our proportionate share of Inotera's equity at the time of those investments. These differences are being amortized as a net credit to earnings through equity in net loss of equity method investees (the "Inotera Amortization"). In the second quarter and first six months of 2012, we recognized $12 million and $24 million, respectively, of Inotera Amortization. As of August 30, 2012, the remaining amount of unrecognized Inotera Amortization was not significant.

Due to significant market declines in the selling prices of DRAM, Inotera incurred net losses of $541 million for its year ended December 31, 2012. Also, Inotera's current liabilities exceeded its current assets by $1.76 billion as of December 31, 2012, which exposes Inotera to liquidity risk. As of December 31, 2012, Inotera was not in compliance with certain loan covenants and had not been in compliance for the past several years. Inotera has requested a waiver from complying with the December 31, 2012 financial covenants and Inotera's creditors have until May 3, 2013 to respond. Inotera's management has developed plans to improve its liquidity, but there can be no assurance that Inotera will be successful in obtaining a waiver from complying with its financial covenants as of December 31, 2012 or improving its liquidity, which may result in its lenders requiring repayment of such loans during the next year.

On January 17, 2013, we entered into agreements with Nanya and Inotera to amend the joint venture relationship involving Inotera. The amendments include a new supply agreement (the "Inotera Supply Agreement") between us and Inotera under which we will purchase for an initial three-year term substantially all of Inotera's output at a purchase price based on a discount from actual market prices for our comparable components. The Inotera Supply Agreement contemplates annual negotiations with respect to potential successive one-year extensions and if in any year the parties do not agree to an extension, the agreement will terminate following the end of the then-existing term and a subsequent three-year wind-down period. Our share of Inotera's capacity would decline over the three year wind-down period. Under applicable accounting guidance, the Inotera Supply Agreement is treated as containing an embedded operating lease with respect to Inotera's production assets during the initial three-year term of the lease. The Inotera Supply Agreement was retroactively effective beginning on January 1, 2013. Effective through December 31, 2012, we had rights and obligations to purchase 50% of Inotera's wafer production capacity based on a margin-sharing formula among Nanya, Inotera and us. Under these agreements, we purchased $200 million and $401 million of DRAM products in the second quarter and first six months of 2013, respectively, and $142 million and $298 million in the second quarter and first six months of 2012, respectively. In the second quarter and first quarter of 2012, we recognized losses on our purchase commitment under the former supply agreement with Inotera of $19 million and $40 million, respectively.

Effective through December 31, 2012, under a cost-sharing arrangement, we generally shared DRAM development costs with Nanya. As a result of the January 17, 2013 agreements, which were retroactively effective beginning on January 1, 2013, Nanya will no longer participate in the joint development program. Pursuant to the cost-sharing arrangement, our research and development ("R&D") costs were reduced by $4 million and $19 million in the second quarter and first six months of 2013, respectively, and $36 million and $73 million in the second quarter and first six months of 2012, respectively.

**Other**

***Transform:*** In the second quarter of 2010, we acquired a 50% interest in Transform, a developer, manufacturer and marketer of photovoltaic technology and solar panels, from Origin. As of February 28, 2013, we and Origin each held a 50% ownership interest in Transform. As a result of the ongoing challenging global environment in the solar industry and unfavorable worldwide supply and demand conditions, in May 2012 the Board of Directors of Transform approved a liquidation plan. As of August 30, 2012, Transform's operations were substantially discontinued.

***Aptina:*** Other equity method investments included a 30.2% equity interest in Aptina. The amount of cumulative loss we recognized from our investment in Aptina through the second quarter of 2012 reduced our investment balance to zero and we ceased recognizing our proportionate share of Aptina's losses.

We manufacture components for CMOS image sensors for Aptina under a wafer supply agreement. For the second quarter and first six months of 2013, we recognized net sales of $48 million and $109 million, respectively, from products sold to Aptina, and cost of goods sold of $57 million and $138 million, respectively. For the second quarter and first six months of 2012, we recognized net sales of $99 million and $193 million, respectively, from products sold to Aptina, which approximated costs. Upon the closing of our agreement to sell MIT to LFoundry, we will assign to LFoundry our supply agreement with Aptina to manufacture image sensors at the 200mm Avezzano facility. (See "Micron Technology Italia, S.r.l." note.)

## Intangible Assets

| As of | February 28, 2013 | | August 30, 2012 | |
|---|---|---|---|---|
| | Gross Amount | Accumulated Amortization | Gross Amount | Accumulated Amortization |
| Product and process technology | $ 579 | $ (255) | $ 575 | $ (234) |
| Customer relationships | 127 | (106) | 127 | (98) |
| Other | 1 | — | 1 | — |
| | $ 707 | $ (361) | $ 703 | $ (332) |

During the first six months of 2013 and 2012, we capitalized $16 million and $30 million, respectively, for product and process technology with weighted-average useful lives of 10 years and 9 years, respectively.

Amortization expense was $21 million and $41 million for the second quarter and first six months of 2013 and $22 million and $44 million for the second quarter and first six months of 2012, respectively. Annual amortization expense is estimated to be $82 million for 2013, $78 million for 2014, $60 million for 2015, $52 million for 2016 and $41 million for 2017.

## Accounts Payable and Accrued Expenses

| As of | February 28, 2013 | August 30, 2012 |
|---|---|---|
| Accounts payable | $ 674 | $ 818 |
| Salaries, wages and benefits | 209 | 290 |
| Customer advances | 136 | 141 |
| Related party payables | 106 | 130 |
| Income and other taxes | 33 | 25 |
| Other | 340 | 237 |
| | $ 1,498 | $ 1,641 |

As of February 28, 2013 and August 30, 2012, related party payables included $106 million and $130 million, respectively, due to Inotera primarily for the purchase of DRAM products under the Inotera Supply Agreement.

As of February 28, 2013 and August 30, 2012, customer advances included $133 million and $139 million, respectively, for amounts received from Intel to be applied to Intel's future purchases under a NAND Flash supply agreement. In addition, as of February 28, 2013 and August 30, 2012, other noncurrent liabilities included $62 million and $120 million, respectively, from this agreement. (See "Consolidated Variable Interest Entities – IM Flash" note.)

As of February 28, 2013 and August 30, 2012, other accounts payable and accrued expenses included $172 million and $51 million, respectively, of liabilities associated with currency hedges executed in connection with the Sponsor Agreement and Rexchip Share Purchase Agreement. As of February 28, 2013 and August 30, 2012, other accounts payable and accrued expenses included $18 million and $14 million, respectively, due to Intel for NAND Flash product design and process development and licensing fees pursuant to cost-sharing agreements. (See "Derivative Financial Instruments" and "Consolidated Variable Interest Entities – IM Flash" notes.)

## Debt

| As of | February 28, 2013 | August 30, 2012 |
|---|---|---|
| Capital lease obligations, due in periodic installments, weighted-average remaining term of 3.8 years and weighted-average rate 4.5% as of February 28, 2013 | $ 935 | $ 883 |
| 2032C convertible senior notes, due May 2032, holder can put back May 2019[(1)], stated rate 2.375%, effective rate 6.0%, net of discount of $93 and $99, respectively | 457 | 451 |
| 2014 convertible senior notes, due June 2014, stated rate 1.875%, effective rate 7.9%, net of discount of $33 and $89, respectively | 452 | 860 |
| 2032D convertible senior notes, due May 2032, holder can put back May 2021[(1)], stated rate 3.125%, effective rate 6.3%, net of discount of $85 and $89, respectively | 365 | 361 |
| 2031A convertible senior notes, due August 2031, holder can put back August 2018[(1)], stated rate 1.5%, effective rate 6.5%, net of discount of $74 and $80, respectively | 271 | 265 |
| 2033E convertible senior notes, due February 2033, holder can put back February 2018[(1)], stated rate 1.625%, effective rate 4.5%, net of discount of $31 | 269 | — |
| 2033F convertible senior notes, due February 2033, holder can put back February 2020[(1)], stated rate 2.125%, effective rate 4.9%, net of discount of $43 | 257 | — |
| 2031B convertible senior notes, due August 2031, holder can put back August 2020[(1)], stated rate 1.875%, effective rate 7.0%, net of discount of $97 and $102, respectively | 248 | 243 |
| Term note payable, due in periodic installments through January 2018, stated rate 2.4% | 212 | — |
| 2027 convertible senior notes, due June 2027, holder can put back June 2017[(1)], stated rate 1.875%, effective rate 6.9%, net of discount of $31 and $34, respectively | 144 | 141 |
| Intel senior note, due in periodic installments through April 2014, variable rate | 41 | 58 |
| | 3,651 | 3,262 |
| Less current portion | (350) | (224) |
| | $ 3,301 | $ 3,038 |

*[(1)] Holders of these notes have the right to require us to repurchase all or a portion of their notes on the dates specified.*

**Capital Lease Obligations**

In the second quarter of 2013, we received $47 million in proceeds from equipment sale-leaseback transactions and as a result recorded capital lease obligations aggregating $47 million at a weighted-average effective interest rate of 4.6%, payable in periodic installments through January 2017. In the first six months of 2013, we received $73 million in proceeds from equipment sale-leaseback transactions and as a result recorded capital lease obligations aggregating $73 million at a weighted-average effective interest rate of 4.6%, payable in periodic installments through January 2017.

**Partial Repurchase of the 2014 Notes**

On February 12, 2013, we repurchased $464 million of aggregate principal amount of our 1.875% Convertible Senior Notes due June 2014 (the "2014 Notes") for $477 million. The liability and equity components of the 2014 Notes were stated separately pursuant to the accounting standards for convertible debt instruments that may be fully or partially settled in cash upon conversion. Accordingly, the repurchase resulted in the derecognition of $431 million in debt for the principal amount (net of $33 million of debt discount) and $15 million in additional capital for the equity component. We recognized a charge of $31 million associated with the early liquidation, based on the estimated $462 million fair value of the debt component and the $431 million carrying value (net of unamortized discount) of the notes repurchased. The fair value of the debt component was estimated using an interest rate for nonconvertible debt, with terms similar to the debt component of the 2014 Notes on a stand-alone basis, issued by entities with credit ratings similar to ours at the repurchase date (Level 2 fair value measurements).

**2033E and 2033F Notes**

On February 12, 2013, we issued $300 million of 1.625% Convertible Senior Notes due February 2033 (the "2033E Notes") and $300 million of 2.125% Convertible Senior Notes due February 2033 (the "2033F Notes" and together with the 2033E Notes, the "2033 Notes"). Issuance costs for the 2033 Notes totaled $16 million. The initial conversion rate for the 2033 Notes is 91.4808 shares of common stock per $1,000 principal amount, equivalent to an initial conversion price of approximately $10.93 per share of common stock. Interest is payable in February and August of each year.

Upon issuance of the 2033 Notes, we recorded $526 million of debt, $72 million of additional capital and $14 million of deferred debt issuance costs (included in other noncurrent assets). The amount recorded as debt is based on the fair value of the debt component as a standalone instrument and was determined using an average interest rate for similar nonconvertible debt issued by entities with credit ratings comparable to ours at the time of issuance (Level 2 fair value measurements). The difference between the debt recorded at inception and the principal amount ($31 million for the 2033E Notes and $43 million for the 2033F Notes) is being accreted to principal as interest expense through February 2018 for the 2033E Notes and February 2020 for the 2033F Notes, the expected life of the notes.

***Conversion Rights***: Holders may convert their 2033 Notes under the following circumstances: (1) if the 2033 Notes are called for redemption; (2) during any calendar quarter if the closing price of our common stock for at least 20 trading days in the 30 consecutive trading days ending on the last trading day of the preceding calendar quarter is more than 130% of the conversion price (approximately $14.21 per share) of the 2033 Notes; (3) if the trading price of the 2033 Notes is less than 98% of the product of the closing price of our common stock and the conversion rate of the 2033 Notes during the periods specified in the indenture; (4) if specified distributions or corporate events occur, as set forth in the indenture for the 2033 Notes; or (5) at any time after November 15, 2032.

Upon conversion, we will pay cash equal to the lesser of the aggregate principal amount and the conversion value of the notes being converted and cash, shares of common stock or a combination of cash and shares of common stock, at our option, for any remaining conversion obligation. As a result of the conversion provisions in the indenture, upon conversion of the 2033 Notes, only the amounts payable in excess of the principal amounts are considered in diluted earnings per share under the treasury stock method.

***Cash Redemption at Our Option***: We may redeem for cash the 2033E Notes on or after February 20, 2018 and the 2033F Notes on or after February 20, 2020. The redemption price will equal the principal amount plus accrued and unpaid interest.

***Cash Repurchase at the Option of the Holder***: We may be required by the holders of the 2033 Notes to repurchase for cash all or a portion of the 2033E Notes on February 15, 2018 and on February 15, 2023 and all or a portion of the 2033F Notes on February 15, 2020 and on February 15, 2023. The repurchase price is equal to the principal amount plus accrued and unpaid interest. Upon a change in control or a termination of trading, as defined in the indenture, holders of the 2033 Notes may require us to repurchase for cash all or a portion of their 2033 Notes at a repurchase price equal to the principal amount plus accrued and unpaid interest.

**Term Note Payable**

On October 2, 2012, we entered into a facility agreement to obtain financing collateralized by semiconductor production equipment. Subject to customary conditions, we could draw up to $214 million under the facility agreement. Amounts drawn are payable in 10 equal semi-annual installments beginning six months after the draw date. On October 18, 2012, we drew $173 million with interest at 2.4% per annum. On January 31, 2013, we drew the remaining $41 million with interest at 2.4% per annum. The facility agreement contains customary covenants and events of default.

**Revolving Credit Facility**

On September 5, 2012, we entered into a three-year revolving credit facility. Under this credit facility, we can draw up to the lesser of $255 million or 80% of the net outstanding balance of certain trade receivables. Amounts drawn would be collateralized by a security interest in such receivables. The availability of the facility is subject to certain customary conditions, including the absence of any event or circumstance that has a material adverse effect on our business or financial condition. The revolving credit facility contains customary covenants and a repayment provision in the event that the maximum aging of the receivables exceeds a specified threshold. Interest is payable monthly on any outstanding principal balance at a variable rate equal to the 30-day Singapore Interbank Offering Rate ("SIBOR") plus 2.8% per annum. As of February 28, 2013, we had not drawn any amounts under this facility.

## Contingencies

We have accrued a liability and charged operations for the estimated costs of adjudication or settlement of various asserted and unasserted claims existing as of the balance sheet date, including those described below. We are currently a party to other legal actions arising from the normal course of business, none of which is expected to have a material adverse effect on our business, results of operations or financial condition.

**Patent Matters**

As is typical in the semiconductor and other high technology industries, from time to time, others have asserted, and may in the future assert, that our products or manufacturing processes infringe their intellectual property rights.

We are engaged in litigation with Rambus, Inc. ("Rambus") relating to certain of Rambus' patents and certain of our claims and defenses. Our lawsuits with Rambus are pending in the U.S. District Court for the District of Delaware, U.S. District Court for the Northern District of California, Germany, France, and Italy. On August 28, 2000, we filed a complaint against Rambus in the U.S. District Court for the District of Delaware seeking declaratory and injunctive relief. The complaint alleges, among other things, various anticompetitive activities and also seeks a declaratory judgment that certain Rambus patents are invalid and/or unenforceable. Rambus subsequently filed an answer and counterclaim in Delaware alleging, among other things, infringement of twelve Rambus patents and seeking monetary damages and injunctive relief. We subsequently added claims and defenses based on Rambus' alleged spoliation of evidence and litigation misconduct. The spoliation and litigation misconduct claims and defenses were heard in a bench trial before Judge Robinson in October 2007. On January 9, 2009, Judge Robinson entered an opinion in our favor holding that Rambus had engaged in spoliation and that the twelve Rambus patents in the suit were unenforceable against us. Rambus subsequently appealed the decision to the U.S. Court of Appeals for the Federal Circuit. On May 13, 2011, the Federal Circuit affirmed Judge Robinson's finding of spoliation, but vacated the dismissal sanction and remanded the case to the Delaware District Court for analysis of the remedy based on the Federal Circuit's decision. On January 2, 2013, Judge Robinson entered a new opinion in our favor holding that Rambus had engaged in spoliation, that Rambus' spoliation was done in bad faith, that the spoliation prejudiced us, and that the appropriate sanction was to declare the twelve Rambus patents in the suit unenforceable against us. On March 27, 2013, Rambus filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit. On January 13, 2006, Rambus filed a lawsuit against us in the U.S. District Court for the Northern District of California alleging that certain of our DDR2, DDR3, RLDRAM and RLDRAM II products infringe as many as fourteen Rambus patents and seeking monetary damages, treble damages, and injunctive relief. The Northern District of California Court stayed the trial of the patent phase of the Northern District of California case upon appeal of the Delaware spoliation issue to the Federal Circuit.

On September 1, 2011, HSM Portfolio LLC and Technology Properties Limited LLC filed a patent infringement action in the U.S. District Court for the District of Delaware against us and seventeen other defendants. The complaint alleges that certain of our DRAM and image sensor products infringe two U.S. patents and seeks injunctive relief, damages, attorneys' fees, and costs.

On September 9, 2011, Advanced Data Access LLC filed a patent infringement action in the U.S. District Court for the Eastern District of Texas (Tyler) against us and seven other defendants. On November 16, 2011, Advanced Data Access filed an amended complaint. The amended complaint alleged that certain of our DRAM products infringed two U.S. patents and sought injunctive relief, damages, attorneys' fees, and costs. On March 20, 2013, we executed a settlement agreement resolving this litigation. The settlement amount did not have a material effect on our business, results of operations or financial condition.

On September 14, 2011, Smart Memory Solutions LLC filed a patent infringement action in the U.S. District Court for the District of Delaware against us and Winbond Electronics Corporation of America. The complaint alleged that certain of our NOR Flash products infringed a single U.S. patent and sought injunctive relief, damages, attorneys' fees, and costs. On March 20, 2013, we executed a settlement agreement resolving this litigation. The settlement amount did not have a material effect on our business, results of operations or financial condition.

On December 5, 2011, the Board of Trustees for the University of Illinois filed a patent infringement action against us in the U.S. District Court for the Central District of Illinois. The complaint alleges that unspecified semiconductor products of ours infringe three U.S. patents and seeks injunctive relief, damages, attorneys' fees, and costs. We have filed three petitions for *inter-partes* review by the Patent and Trademark Office, challenging the validity of each of the patents in suit. The District Court has stayed the litigation pending the outcome of the *inter-partes* review by the Patent Office.

On March 26, 2012, Semiconductor Technologies, LLC filed a patent infringement action in the U.S. District Court for the Eastern District of Texas (Marshall) against us. The complaint alleged that certain of our DRAM products infringed five U.S. patents and sought injunctive relief, damages, attorneys' fees, and costs. On March 20, 2013, we executed a settlement agreement resolving this litigation. The settlement amount did not have a material effect on our business, results of operations or financial condition.

On April 27, 2012, Semcon Tech, LLC filed a patent infringement action against us in the U.S. District Court for the District of Delaware. The complaint alleges that our use of various chemical mechanical planarization systems purchased from Applied Materials and others infringes a single U.S. patent and seeks injunctive relief, damages, attorneys' fees, and costs.

Among other things, the above lawsuits pertain to certain of our SDRAM, DDR, DDR2, DDR3, RLDRAM, NAND Flash, NOR Flash and image sensor products, which account for a significant portion of our net sales.

We are unable to predict the outcome of assertions of infringement made against us and therefore cannot estimate the range of possible loss, except as noted in the discussion of the Advanced Data Access LLC, Smart Memory Solutions LLC and Semiconductor Technologies, LLC matters above. A court determination that our products or manufacturing processes infringe the intellectual property rights of others could result in significant liability and/or require us to make material changes to our products and/or manufacturing processes. Any of the foregoing could have a material adverse effect on our business, results of operations or financial condition.

**Antitrust Matters**

On May 5, 2004, Rambus filed a complaint in the Superior Court of the State of California (San Francisco County) against us and other DRAM suppliers which alleged that the defendants harmed Rambus by engaging in concerted and unlawful efforts affecting Rambus DRAM by eliminating competition and stifling innovation in the market for computer memory technology and computer memory chips. Rambus' complaint alleged various causes of action under California state law including, among other things, a conspiracy to restrict output and fix prices, a conspiracy to monopolize, intentional interference with prospective economic advantage, and unfair competition. Rambus sought a judgment for damages of approximately $3.9 billion, joint and several liability, trebling of damages awarded, punitive damages, a permanent injunction enjoining the defendants from the conduct alleged in the complaint, interest, and attorneys' fees and costs. Trial began on June 20, 2011, and the case went to the jury on September 21, 2011. On November 16, 2011, the jury found for us on all claims. On April 2, 2012, Rambus filed a notice of appeal to the California 1st District Court of Appeal.

At least sixty-eight purported class action price-fixing lawsuits have been filed against us and other DRAM suppliers in various federal and state courts in the United States and in Puerto Rico on behalf of indirect purchasers alleging a conspiracy to increase DRAM prices in violation of federal and state antitrust laws and state unfair competition law, and/or unjust enrichment relating to the sale and pricing of DRAM products during the period from April 1999 through at least June 2002. The complaints seek joint and several damages, trebled, in addition to restitution, costs and attorneys' fees. A number of these cases have been removed to federal court and transferred to the U.S. District Court for the Northern District of California for consolidated pre-trial proceedings. In July, 2006, the Attorneys General for approximately forty U.S. states and territories filed suit in the U.S. District Court for the Northern District of California. The complaints allege, among other things, violations of the Sherman Act, Cartwright Act, and certain other states' consumer protection and antitrust laws and seek joint and several damages, trebled, as well as injunctive and other relief. On October 3, 2008, the California Attorney General filed a similar lawsuit in California Superior Court, purportedly on behalf of local California government entities, alleging, among other things, violations of the Cartwright Act and state unfair competition law. On June 23, 2010, we executed a settlement agreement resolving these purported class-action indirect purchaser cases and the pending cases of the Attorneys General relating to alleged DRAM price-fixing in the United States. Subject to certain conditions, including final court approval of the class settlements, we agreed to pay approximately $67 million in aggregate in three equal installments over a two-year period. We had paid the full amount into an escrow account by the end of the first quarter of 2013 in accordance with the settlement agreement.

Three putative class action lawsuits alleging price-fixing of DRAM products also have been filed against us in Quebec, Ontario, and British Columbia, Canada, on behalf of direct and indirect purchasers, asserting violations of the Canadian Competition Act and other common law claims (collectively the "Canadian Cases"). The claims were initiated between December 2004 (British Columbia) and June 2006 (Quebec). The plaintiffs seek monetary damages, restitution, costs, and attorneys' fees. The substantive allegations in these cases are similar to those asserted in the DRAM antitrust cases filed in the United States. Plaintiffs' motion for class certification was denied in the British Columbia and Quebec cases in May and June 2008, respectively. Plaintiffs subsequently filed an appeal of each of those decisions. On November 12, 2009, the British Columbia Court of Appeal reversed, and on November 16, 2011, the Quebec Court of Appeal also reversed the denial of class certification and remanded the cases for further proceedings. On October 16, 2012, we entered into a settlement agreement resolving these three putative class action cases subject to certain conditions including final court approval of the settlement. The settlement amount did not have a material effect on our business, results of operations or financial condition.

On June 21, 2010, the Brazil Secretariat of Economic Law of the Ministry of Justice ("SDE") announced that it had initiated an investigation relating to alleged anticompetitive activities within the DRAM industry. The SDE's Notice of Investigation names various DRAM manufacturers and certain executives, including us, and focuses on the period from July 1998 to June 2002.

We are unable to predict the outcome of these matters and therefore cannot estimate the range of possible loss, except as noted in the U.S. indirect purchaser cases and the Canadian Cases above. The final resolution of these alleged violations of antitrust laws could result in significant liability and could have a material adverse effect on our business, results of operations or financial condition.

**Commercial Matters**

On January 20, 2011, Dr. Michael Jaffé, administrator for Qimonda AG ("Qimonda") insolvency proceedings, filed suit against us and Micron Semiconductor B.V., our Netherlands subsidiary, in the District Court of Munich, Civil Chamber. The complaint seeks to void under Section 133 of the German Insolvency Act a share purchase agreement between us and Qimonda signed in fall 2008 pursuant to which we purchased all of Qimonda's shares of Inotera Memories, Inc. and seeks an order requiring us to retransfer the Inotera shares purchased from Qimonda to the Qimonda estate. The complaint also seeks to terminate under Sections 103 or 133 of the German Insolvency Code a patent cross license between us and Qimonda entered into at the same time as the share purchase agreement. A three-judge panel will render a decision after a series of hearings with pleadings, arguments and witnesses. Hearings were held on September 25, 2012 and February 5, 2013. Additional hearings are scheduled for June 11, 2013 and July 2, 2013. We are unable to predict the outcome of this lawsuit and therefore cannot estimate the range of possible loss. The final resolution of this lawsuit could result in the loss of the Inotera shares or equivalent monetary damages and the termination of the patent cross license, which could have a material adverse effect on our business, results of operation or financial condition. As of February 28, 2013, the Inotera shares purchased from Qimonda had a net carrying value of $121 million.

**Other**

In the normal course of business, we are a party to a variety of agreements pursuant to which we may be obligated to indemnify the other party. It is not possible to predict the maximum potential amount of future payments under these types of agreements due to the conditional nature of our obligations and the unique facts and circumstances involved in each particular agreement. Historically, our payments under these types of agreements have not had a material adverse effect on our business, results of operations or financial condition.

Under the Sponsor Agreement, we have provided payment guarantees related to financing of capital expenditures. (See "Proposed Acquisition of Elpida Memory, Inc." note.)

## Micron Shareholders' Equity and Noncontrolling Interests in Subsidiaries

Changes in the components of equity were as follows:

| | Six Months Ended February 28, 2013 | | | Six Months Ended March 1, 2012 | | |
|---|---|---|---|---|---|---|
| | Attributable to Micron | Noncontrolling Interests | Total Equity | Attributable to Micron | Noncontrolling Interests | Total Equity |
| Beginning balance | $ 7,700 | $ 717 | $ 8,417 | $ 8,470 | $ 1,382 | $ 9,852 |
| Net income (loss) | (561) | 2 | (559) | (469) | — | (469) |
| Other comprehensive income (loss) | (1) | — | (1) | (64) | — | (64) |
| Comprehensive income (loss) | (562) | 2 | (560) | (533) | — | (533) |
| Contribution from noncontrolling interests | — | 10 | 10 | — | 138 | 138 |
| Distributions to noncontrolling interests | — | — | — | — | (147) | (147) |
| Capital and other transactions attributable to Micron | 93 | — | 93 | 49 | — | 49 |
| Ending balance | $ 7,231 | $ 729 | $ 7,960 | $ 7,986 | $ 1,373 | $ 9,359 |

**2013 Capped Call Transactions**

Concurrent with the issuance of the 2033E and 2033F Notes, on February 6, 2013 and February 12, 2013, we entered into capped call transactions (the "2013E Capped Calls" and "2013F Capped Calls," collectively the "2013 Capped Calls") that have an initial strike price of approximately $10.93 per share, subject to certain adjustments, which was set to equal the initial conversion price of the 2033 Notes. The 2013 Capped Calls have a cap price of $14.51 per share and cover, subject to anti-dilution adjustments similar to those contained in the 2033 Notes, an approximate combined total of 54.9 million shares of common stock. The 2013E Capped Calls expire on various dates between January and February 2018, and the 2013F Capped Calls expire on various dates between January and February 2020. The 2013 Capped Calls are intended to reduce the potential dilution upon conversion of the 2033 Notes. The 2013 Capped Calls may be settled in shares or cash, at our election. Settlement of the 2013 Capped Calls in cash on their respective expiration dates would result in us receiving an amount ranging from zero, if the market price per share of our common stock is at or below $10.93, to a maximum of $196 million if the market price per share of our common stock is at or above $14.51. We paid $48 million to purchase the 2013 Capped Calls. The 2013 Capped Calls are considered capital transactions and the related cost was recorded as a charge to additional capital.

**2009 Capped Call Transactions**

Concurrent with the issuance in April 2009 of our 4.25% Convertible Senior Notes due 2013, we entered into capped call transactions (the "2009 Capped Calls") covering approximately 45.2 million shares of common stock with an initial strike price of approximately $5.08 per share and a cap price of $6.64 per share. The 2009 Capped Calls expired in October, 2012 and November, 2012. We elected cash settlement and received $24 million in the first quarter of 2013.

**Accumulated Other Comprehensive Income (Loss)**

The components of accumulated other comprehensive income (loss), net of tax, at the end of each period, as well as the activity for the six months ended February 28, 2013, were as follows:

| | August 30, 2012 | Other Comprehensive Income | February 28, 2013 |
|---|---|---|---|
| Cumulative foreign currency translation adjustments | $ 49 | $ 9 | $ 58 |
| Gain (loss) on derivatives, net | 31 | (8) | 23 |
| Gain (loss) on investments, net | 1 | (1) | — |
| Pension liability adjustments | (1) | (1) | (2) |
| Accumulated other comprehensive income | $ 80 | $ (1) | $ 79 |

## Derivative Financial Instruments

We are exposed to currency exchange rate risk for monetary assets and liabilities held or denominated in foreign currencies, primarily the euro, shekel, Singapore dollar and yen. We are also exposed to currency exchange rate risk for capital expenditures and operating cash flows, primarily denominated in the euro and yen. In connection with the Sponsor Agreement and Rexchip Share Purchase Agreement entered into in July 2012, we are exposed to significant currency exchange rate risk for the yen and New Taiwan dollar. We use derivative instruments to manage a portion of our exposures to changes in currency exchange rates. For exposures associated with our monetary assets and liabilities, our primary objective in entering into currency derivatives is to reduce the volatility that changes in currency exchange rates have on our earnings. For exposures associated with our capital expenditures and operating cash flows, our primary objective of entering into currency derivatives is to reduce the volatility that changes in currency exchange rates have on future cash flows. For exposures associated with our yen or New Taiwan dollar denominated payment obligations under the Sponsor Agreement and Rexchip Share Purchase Agreement, our primary objective for entering into currency derivatives is to mitigate risks if those currencies strengthen relative to the U.S. dollar, while preserving some ability for us to benefit if those currencies weaken.

Our derivatives consist primarily of currency forward contracts and currency options. The derivatives expose us to credit risk to the extent the counterparties may be unable to meet the terms of the derivative instrument. As of February 28, 2013, our maximum exposure to loss due to credit risk if counterparties fail completely to perform according to the terms of the contracts, was generally equal to the fair value of our assets for these contracts as listed in the tables below. We seek to mitigate such risk by limiting our counterparties to major financial institutions and by spreading risk across multiple major financial institutions. We also enter into master netting arrangements with counterparties when possible to mitigate credit risk in derivative transactions. A master netting arrangement allows counterparties to net settle amounts owed to each other as a result of separate offsetting derivative transactions. In addition, we monitor the potential risk of loss with any one counterparty resulting from this type of credit risk on an ongoing basis. We have the following currency risk management programs:

**Currency Derivatives without Hedge Accounting Designation**

We utilize a rolling hedge strategy with currency forward contracts that generally mature within 35 days to hedge our exposure to changes in currency exchange rates from our monetary assets and liabilities. At the end of each reporting period, monetary assets and liabilities held or denominated in currencies other than the U.S. dollar are remeasured in U.S. dollars and the associated outstanding forward contracts are marked-to-market. Currency forward contracts are valued at fair values based on the middle of bid and ask prices of dealers or exchange quotations (Level 2 fair value measurements). Realized and unrealized gains and losses on derivative instruments and the underlying monetary assets and liabilities are included in other non-operating income (expense).

In connection with the currency exchange rate risk with the Sponsor Agreement and Rexchip Share Purchase Agreement, we entered into currency options that settled on March 26, 2013 and expired on April 2, 2013, respectively. On March 26, 2013, we entered into below market currency forward contracts and purchased currency put options that expire on September 25, 2013 to hedge our exposure to the yen-denominated acquisition payments. (See "Proposed Acquisition of Elpida Memory, Inc. – Currency Hedging" note.) Currency options are valued at their fair value using a modified Black-Scholes option valuation model using inputs of the current spot rate, strike price, risk-free interest rate, time to maturity, volatility and credit-risk spread (Level 2 fair value measurements). These options are marked-to-market at the end of each reporting period and realized and unrealized gains and losses are included in other non-operating income (expense).

Total gross notional amounts and fair values for currency derivatives without hedge accounting designation were as follows:

| Currency | Notional Amount (in U.S. Dollars) | Fair Value of | |
|---|---|---|---|
| | | Asset [1] | (Liability) [2] |
| **As of February 28, 2013** | | | |
| Forward contracts: | | | |
| Euro | $ 255 | $ 1 | $ (5) |
| Singapore dollar | 208 | — | — |
| Shekel | 64 | — | — |
| Yen | 24 | 1 | (2) |
| Currency options: | | | |
| Yen | 5,050 [3] | — | (119) |
| New Taiwan dollar | 342 | — | — |
| | $ 5,943 | $ 2 | $ (126) |
| **As of August 30, 2012** | | | |
| Forward contracts: | | | |
| Euro | $ 173 | $ 2 | $ (1) |
| Singapore dollar | 251 | — | (1) |
| Shekel | 65 | — | (1) |
| Yen | 18 | — | — |
| Currency options: | | | |
| Yen | 5,050 [3] | 57 | — |
| New Taiwan dollar | 342 | 2 | — |
| | $ 5,899 | $ 61 | $ (3) |

(1) *Included in receivables – other.*
(2) *Included in accounts payable and accrued expenses – other.*
(3) *Notional amount includes purchased options of $2,527 million and sold options of $2,523 million.*

For currency forward contracts and options without hedge accounting designation, we recognized net losses of $122 million and $173 million for the second quarter and first six months of 2013, respectively, and net gains of $3 million and net losses of $17 million for the second quarter and first six months of 2012, respectively, which were included in other non-operating income (expense).

**Currency Derivatives with Cash Flow Hedge Accounting Designation**

We utilize currency forward contracts that generally mature within 12 months and currency options that generally mature from 12 to 18 months to hedge our exposure to changes in cash flows from changes in currency exchange rates for certain capital expenditures and forecasted operating cash flows. Currency forward contracts are valued at their fair values based on market-based observable inputs including currency exchange spot and forward rates, interest rate and credit risk spread (Level 2 fair value measurements). Currency options are valued at their fair value using a modified Black-Scholes option valuation model using inputs of the current spot rate, strike price, risk-free interest rate, time to maturity, volatility and credit-risk spread (Level 2 fair value measurements). For derivatives designated as cash flow hedges, the effective portion of the realized and unrealized gain or loss on the derivatives was included as a component of accumulated other comprehensive income (loss). For derivatives hedging capital expenditures, the amounts in accumulated other comprehensive income (loss) for these cash flow hedges are reclassified into earnings in the same line items of the consolidated statements of operation and in the same periods in which the underlying transactions affect earnings. Amounts in accumulated other comprehensive income (loss) for inventory purchases are reclassified to earnings when inventory is sold. The ineffective or excluded portion of the realized and unrealized gain or loss is included in other non-operating income (expense). Total gross notional amounts and fair values for currency derivatives with cash flow hedge accounting designation were as follows:

| Currency | Notional Amount (in U.S. Dollars) | Fair Value of | |
|---|---|---|---|
| | | Asset [1] | (Liability) [2] |
| **As of February 28, 2013** | | | |
| Forward contracts: | | | |
| Yen | $ 37 | $ — | $ (4) |
| Euro | 9 | — | — |
| Currency options: | | | |
| Yen | 40 | — | (2) |
| | $ 86 | $ — | $ (6) |
| **As of August 30, 2012** | | | |
| Forward contracts: | | | |
| Yen | $ 108 | $ 2 | $ — |
| Euro | 35 | — | — |
| Currency options: | | | |
| Yen | 32 | — | — |
| | $ 175 | $ 2 | $ — |

(1) *Included in receivables – other.*

(2) *Included in accounts payable and accrued expenses – other.*

For the second quarter and first six months of 2013, we recognized net pre-tax derivative losses of $6 million and $10 million, respectively, in accumulated other comprehensive income (loss) from the effective portion of cash flow hedges. For the second quarter and first six months of 2012, we recognized net pre-tax derivative losses of $2 million and $11 million, respectively, in accumulated other comprehensive income (loss) from the effective portion of cash flow hedges. The ineffective and excluded portions of cash flow hedges recognized in other non-operating income (expense) were not significant in the second quarters and first six months of 2013 and 2012. In the second quarter and first six months of 2013, $1 million of pre-tax net losses and $2 million of pre-tax net gains, respectively, were reclassified from accumulated other comprehensive income (loss) to earnings. In the second quarter and first six months of 2012, $2 million and $4 million, respectively, of pre-tax net gains were reclassified from accumulated other comprehensive income (loss) to earnings. As of February 28, 2013, the amount of pre-tax net derivative gains included in accumulated other accumulated comprehensive income (loss) expected to be reclassified into earnings in the next 12 months was $2 million.

## Fair Value Measurements

Accounting standards establish three levels of inputs that may be used to measure fair value: quoted prices in active markets for identical assets or liabilities (referred to as Level 1), inputs other than Level 1 that are observable for the asset or liability either directly or indirectly (referred to as Level 2) and unobservable inputs to the valuation methodology that are significant to the measurement of fair value of assets or liabilities (referred to as Level 3).

**Fair Value Measurements on a Recurring Basis**

All marketable debt and equity investments are classified as available-for-sale and are carried at fair value. Assets measured at fair value on a recurring basis were as follows:

| As of | February 28, 2013 | | | | August 30, 2012 | | | |
|---|---|---|---|---|---|---|---|---|
| | Level 1 | Level 2 | Level 3 | Total | Level 1 | Level 2 | Level 3 | Total |
| Cash equivalents: | | | | | | | | |
| Money market funds | $ 1,634 | $ — | $ — | $ 1,634 | $ 2,159 | $ — | $ — | $ 2,159 |
| Certificates of deposit | — | 92 | — | 92 | — | 27 | — | 27 |
| Commercial paper | — | 47 | — | 47 | — | 29 | — | 29 |
| Government securities | — | — | — | — | — | 5 | — | 5 |
| | 1,634 | 139 | — | 1,773 | 2,159 | 61 | — | 2,220 |
| Short-term investments: | | | | | | | | |
| Government securities | — | 103 | — | 103 | — | 51 | — | 51 |
| Corporate bonds | — | 50 | — | 50 | — | 31 | — | 31 |
| Commercial paper | — | 11 | — | 11 | — | 10 | — | 10 |
| Asset-backed securities | — | 2 | — | 2 | — | 4 | — | 4 |
| Certificates of deposit | — | 1 | — | 1 | — | 4 | — | 4 |
| | — | 167 | — | 167 | — | 100 | — | 100 |
| Long-term marketable investments: | | | | | | | | |
| Corporate bonds | — | 311 | — | 311 | — | 203 | — | 203 |
| Government securities | — | 117 | — | 117 | — | 88 | — | 88 |
| Asset-backed securities | — | 109 | — | 109 | — | 73 | — | 73 |
| Marketable equity securities | 7 | 2 | — | 9 | 5 | 5 | — | 10 |
| | 7 | 539 | — | 546 | 5 | 369 | — | 374 |
| | | | | | | | | |
| | $ 1,641 | $ 845 | $ — | $ 2,486 | $ 2,164 | $ 530 | $ — | $ 2,694 |

Government securities consist of securities issued directly by or deemed to be guaranteed by government entities such as U.S. and non-U.S. agency securities, government bonds and treasury securities. Level 2 securities are valued using information obtained from pricing services, which obtain quoted market prices for similar instruments, non-binding market consensus prices that are corroborated by observable market data, or various other methodologies, to determine the appropriate value at the measurement date. We perform supplemental analysis to validate information obtained from our pricing services. As of February 28, 2013, no adjustments were made to such pricing information.

Marketable equity securities included approximately 1.3 million ordinary shares of Tower Semiconductor Ltd. received in connection with the sale of our wafer fabrication facility in Japan in June 2011. As of February 28, 2013, 0.3 million shares received were subject to resale restriction and were valued using a protective put model (Level 2). Resale restriction had lapsed for the remaining 1.0 million shares and they were valued using quoted market prices (Level 1).

**Fair Value of Financial Instruments**

Amounts reported as cash and equivalents, receivables, and accounts payable and accrued expenses approximate fair value. The estimated fair value and carrying value of debt instruments (carrying value excludes the equity components of our convertible notes classified in equity) were as follows:

| As of | February 28, 2013 | | August 30, 2012 | |
|---|---|---|---|---|
| | Fair Value | Carrying Value | Fair Value | Carrying Value |
| Convertible notes | $ 3,132 | $ 2,463 | $ 2,669 | $ 2,321 |
| Other notes | 246 | 253 | 56 | 58 |

The fair value of our convertible debt instruments was determined based on inputs that are observable in the market or that could be derived from, or corroborated with, observable market data, including our stock price and interest rates based on similar debt issued by parties with credit ratings similar to ours (Level 2). The fair value of our other debt instruments was estimated based on discounted cash flows using inputs that are observable in the market or that could be derived from, or corroborated with, observable market data, including interest rates based on similar debt issued by parties with credit ratings similar to ours (Level 2).

## Equity Plans

As of February 28, 2013, we had an aggregate of 148.6 million shares of common stock reserved for the issuance of stock options and restricted stock awards, of which 104.3 million shares were subject to outstanding awards and 44.3 million shares were available for future awards. Awards are subject to terms and conditions as determined by our Board of Directors.

**Stock Options**

We granted 13.4 million and 17.3 million stock options during the second quarter and first six months of 2013, respectively, with weighted-average grant-date fair values per share of $3.35 and $3.27, respectively. We granted 14.5 million and 20.4 million stock options during the second quarter and first six months of 2012, respectively, with weighted-average grant-date fair values per share of $3.25 and $3.16, respectively.

The fair values of option awards were estimated at each grant date using the Black-Scholes option valuation model. The Black-Scholes model requires the input of assumptions, including the expected stock price volatility and estimated option life. The expected volatilities utilized were based on implied volatilities from traded options on our stock and on historical volatility. The expected lives of options granted were based, in part, on historical experience and on the terms and conditions of the options. The risk-free interest rates utilized were based on the U.S. Treasury yield in effect at each grant date. No dividends were assumed in estimated option values. Assumptions used in the Black-Scholes model are presented below:

| | Quarter Ended | | Six Months Ended | |
|---|---|---|---|---|
| | February 28, 2013 | March 1, 2012 | February 28, 2013 | March 1, 2012 |
| Average expected life in years | 5.1 | 5.1 | 5.1 | 5.1 |
| Weighted-average expected volatility | 59% | 66% | 60% | 66% |
| Weighted-average risk-free interest rate | 0.7% | 0.9% | 0.7% | 1.0% |

**Restricted Stock and Restricted Stock Units ("Restricted Stock Awards")**

As of February 28, 2013, there were 13.4 million shares of Restricted Stock Awards outstanding, of which 3.5 million were performance-based Restricted Stock Awards. For service-based Restricted Stock Awards, restrictions generally lapse in one-fourth increments during each year of employment after the grant date. For performance-based Restricted Stock Awards, vesting is contingent upon meeting certain performance goals. Restricted Stock Awards granted for the second quarters and first six months of 2013 and 2012 were as follows:

| | Quarter Ended | | Six Months Ended | |
|---|---|---|---|---|
| | February 28, 2013 | March 1, 2012 | February 28, 2013 | March 1, 2012 |
| Service-based awards | 3.2 | 2.0 | 5.4 | 3.8 |
| Performance-based awards | — | — | 1.2 | 1.9 |
| Weighted-average grant-date fair values per share | $ 6.69 | $ 5.84 | $ 6.20 | $ 5.40 |

**Stock-based Compensation Expense**

Total compensation costs for our equity plans were as follows:

| | Quarter Ended | | Six Months Ended | |
|---|---|---|---|---|
| | February 28, 2013 | March 1, 2012 | February 28, 2013 | March 1, 2012 |
| Stock-based compensation expense by caption: | | | | |
| Cost of goods sold | $ 7 | $ 7 | $ 13 | $ 12 |
| Selling, general and administrative | 9 | 18 | 18 | 29 |
| Research and development | 5 | 5 | 9 | 9 |
| | $ 21 | $ 30 | $ 40 | $ 50 |
| | | | | |
| Stock-based compensation expense by type of award: | | | | |
| Stock options | $ 14 | $ 19 | $ 27 | $ 31 |
| Restricted stock awards | 7 | 11 | 13 | 19 |
| | $ 21 | $ 30 | $ 40 | $ 50 |

As of February 28, 2013, $187 million of total unrecognized compensation costs, net of estimated forfeitures, related to non-vested awards was expected to be recognized through the second quarter of 2017, resulting in a weighted-average period of 1.3 years. Stock-based compensation expense in the above presentation does not reflect any significant income tax benefits, which is consistent with our treatment of income or loss from our U.S. operations. (See "Income Taxes" note.)

## Other Operating (Income) Expense, Net

| | Quarter Ended | | Six Months Ended | |
|---|---|---|---|---|
| | February 28, 2013 | March 1, 2012 | February 28, 2013 | March 1, 2012 |
| Loss on impairment of MIT assets | $ 62 | $ — | $ 62 | $ — |
| (Gain) loss on disposition of property, plant and equipment | (10) | 5 | (15) | 6 |
| Other | — | 13 | (24) | 7 |
| | $ 52 | $ 18 | $ 23 | $ 13 |

Other operating income for the first six months of 2013 included a gain of $25 million resulting from the termination of a lease by Transform to a portion of our manufacturing facilities in Boise, Idaho.

## Other Non-Operating Income (Expense), Net

| | Quarter Ended | | Six Months Ended | |
|---|---|---|---|---|
| | February 28, 2013 | March 1, 2012 | February 28, 2013 | March 1, 2012 |
| Gain (loss) from changes in currency exchange rates | $ (127) | $ (2) | $ (186) | $ (13) |
| Loss from extinguishment of debt | (31) | — | (31) | — |
| Gain from disposition of investments | — | 39 | — | 39 |
| Other | (1) | — | (1) | — |
| | $ (159) | $ 37 | $ (218) | $ 26 |

Gain (loss) from changes in currency exchange rates in the second quarter and first six months of 2013 included currency losses of $120 million and $178 million, respectively, from changes in the market value of currency hedges executed in connection with our planned acquisitions of Elpida and Rexchip. Loss from extinguishment of debt for the second quarter of 2013 included a $31 million charge associated with early liquidation of the 2014 Notes. (See "Debt" note.)

## Income Taxes

Income taxes for the second quarter of 2013 included tax benefits related to two non-U.S. jurisdictions of $10 million for the favorable resolution of certain prior year tax matters, which was previously reserved as an uncertain tax position, and $9 million for a favorable change in tax law applicable to prior years. Income taxes for the first quarter of 2012 included a tax benefit of $14 million related to the favorable resolution of certain prior year tax matters, which was previously reserved as an uncertain tax position. Remaining taxes for the second quarter and first six months of 2013 and 2012, respectively, primarily reflect taxes on our non-U.S. operations. We have a valuation allowance for our net deferred tax asset associated with our U.S. operations. The provision (benefit) for taxes on U.S. operations in the second and first quarters of 2013 and 2012 was substantially offset by changes in the valuation allowance.

We currently operate in several tax jurisdictions where we have arrangements that allow us to compute our tax provision at rates below the local statutory rates that expire in whole or in part at various dates through 2026. These arrangements benefitted our tax provision in the second quarter and first six months of 2013 by $36 million ($0.04 per diluted share) and by $47 million ($0.05 per diluted share), respectively. These arrangements were not significant in the second quarter or first six months of 2012.

## Earnings Per Share

Basic earnings per share is computed based on the weighted-average number of common shares and stock rights outstanding. Diluted earnings per share is computed based on the weighted-average number of common shares and stock rights outstanding plus the dilutive effects of equity awards and convertible notes. Potential common shares that would increase earnings per share amounts or decrease loss per share amounts are antidilutive and are therefore excluded from diluted earnings per share calculations. Antidilutive potential common shares that could dilute basic earnings per share in the future were 383.9 million for the second quarter and first six months of 2013 and were 290.9 million for the second quarter and first six months of 2012.

| | Quarter Ended | | Six Months Ended | |
|---|---|---|---|---|
| | February 28, 2013 | March 1, 2012 | February 28, 2013 | March 1, 2012 |
| Net loss available to Micron shareholders - basic and diluted | $ (286) | $ (282) | $ (561) | $ (469) |
| Weighted-average common shares outstanding - basic and diluted | 1,016.0 | 982.8 | 1,014.9 | 982.1 |
| Loss per share: | | | | |
| Basic | $ (0.28) | $ (0.29) | $ (0.55) | $ (0.48) |
| Diluted | (0.28) | (0.29) | (0.55) | (0.48) |

## Consolidated Variable Interest Entities

**IM Flash**

***IMFT:*** Since its inception in 2006 through February 28, 2013, we have owned 51% of IMFT, a venture between us and Intel to manufacture NAND Flash memory products and, since the third quarter of 2012, certain emerging memory technologies, for the exclusive use of the members. IMFT is governed by a Board of Managers and the number of managers appointed by each member to the board varies based on the members' respective ownership interests, which is based on contributions to IMFT. The IMFT joint venture agreement extends through 2024 and includes certain buy-sell rights, commencing in 2015, pursuant to which Intel may elect to sell to us, or we may elect to purchase from Intel, Intel's interest in IMFT. If Intel elects to sell, we would set the closing date of the transaction within two years following such election and could elect to receive financing of the purchase price from Intel for one to two years from the closing date.

The following table presents the assets and liabilities of IMFT included in our consolidated balance sheets, excluding intercompany balances:

| As of | February 28, 2013 | August 30, 2012 |
|---|---|---|
| **Assets** | | |
| Cash and equivalents | $ 92 | $ 157 |
| Receivables | 59 | 78 |
| Inventories | 59 | 67 |
| Other current assets | 5 | 5 |
| Total current assets | 215 | 307 |
| Property, plant and equipment, net | 1,368 | 1,342 |
| Other noncurrent assets | 39 | 36 |
| Total assets | $ 1,622 | $ 1,685 |
| | | |
| **Liabilities** | | |
| Accounts payable and accrued expenses | $ 81 | $ 104 |
| Deferred income | 9 | 10 |
| Equipment purchase contracts | 3 | 58 |
| Current portion of long-term debt | 6 | 6 |
| Total current liabilities | 99 | 178 |
| Long-term debt | 16 | 18 |
| Other noncurrent liabilities | 123 | 129 |
| Total liabilities | $ 238 | $ 325 |

Our ability to access IMFT's cash and investments to finance our other operations is subject to agreement by Intel. Creditors of IMFT have recourse only to its assets and do not have recourse to any other of our assets.

IMFT manufactures NAND Flash memory products using designs and technology we develop with Intel. We generally share with Intel the cost of product design, other NAND Flash R&D costs and, since the third quarter of 2012, the R&D cost of certain emerging memory technologies. Our R&D expenses were reduced by reimbursements from Intel of $34 million and $66 million for the second quarter and first six months of 2013, respectively, and $20 million and $42 million for the second quarter and first six months of 2012, respectively.

***IMFS:*** We partnered with Intel in 2007 to form IM Flash Singapore, LLP ("IMFS") to manufacture NAND Flash memory products for the exclusive use of the members. In the third quarter of 2012, we acquired Intel's remaining interest in IMFS and terminated IMFS' supply agreement with us and Intel.

***Supply Agreements:*** IMFT sells products to the joint venture members generally in proportion to their ownership interests at long-term negotiated prices approximating cost. Prior to the third quarter of 2012, IMFS also sold product to us and Intel generally in proportion to our ownership interests at long-term negotiated prices approximating cost. Due to changes in the ownership interest of IMFS, our share of its output grew from 57% at the beginning of the first quarter of 2012 to 78% in the second quarter of 2012. As a result of our acquisition of Intel's remaining interest in IMFS and other IM Flash restructuring agreements with Intel, Intel has not had rights to the output from either IMFS or our Virginia facility since the third quarter of 2012. Subsequent to the third quarter of 2012, we also sell NAND Flash products to Intel under other negotiated arrangements.

Aggregate NAND Flash sales to Intel were $160 million and $308 million for the second quarter and first six months of 2013, respectively, and were $255 million and $516 million for the second quarter and first six months of 2012, respectively. Receivables from Intel for sales of NAND Flash products as of February 28, 2013 and August 30, 2012 were $102 million and $103 million, respectively.

***IM Flash distributions and contributions:*** The following table presents IM Flash's distributions to and contributions from its shareholders ("IM Flash" includes both IMFT and IMFS for the second quarter and first six months of 2012 and includes only IMFT for the second quarter and first six months of 2013):

| | Quarter Ended | | Six Months Ended | |
|---|---|---|---|---|
| | February 28, 2013 | March 1, 2012 | February 28, 2013 | March 1, 2012 |
| IM Flash distributions to Micron | $ — | $ 67 | $ — | $ 153 |
| IM Flash distributions to Intel | — | 64 | — | 147 |
| Micron contributions to IM Flash | 10 | — | 10 | 103 |
| Intel contributions to IM Flash | 10 | — | 10 | 131 |

**MP Mask**

In 2006, we formed a joint venture with Photronics to produce photomasks for leading-edge and advanced next generation semiconductors. At inception and through February 28, 2013, we owned 50.01% and Photronics owned 49.99% of MP Mask. We contributed $8 million to MP Mask and Photronics contributed $7 million to MP Mask in the first quarter of 2012. In connection with the formation of the joint venture, we received $72 million in 2006 in exchange for entering into a license agreement with Photronics, which is being recognized over the term of the 10-year agreement. Deferred income and other noncurrent liabilities included an aggregate of $23 million and $26 million as of February 28, 2013 and August 30, 2012, respectively, related to this agreement. We purchase a substantial majority of the reticles produced by MP Mask pursuant to a supply arrangement.

The following table presents the assets and liabilities of MP Mask included in our consolidated balance sheets, excluding intercompany balances:

| As of | February 28, 2013 | August 30, 2012 |
|---|---|---|
| Current assets | $ 28 | $ 19 |
| Noncurrent assets (primarily property, plant and equipment) | 163 | 170 |
| Current liabilities | 10 | 12 |

Creditors of MP Mask have recourse only to the assets of MP Mask and do not have recourse to any other of our assets.

## Segment Information

Segment information reported herein is consistent with how it is reviewed and evaluated by our chief operating decision makers. Factors used to identify our segments include, among others, products, technologies and customers. We have the following four reportable segments:

***DRAM Solutions Group ("DSG"):*** Includes DRAM products sold to the PC, consumer electronics, networking and server markets.
***NAND Solutions Group ("NSG"):*** Includes high-volume NAND Flash products sold into data storage, personal music players, and the high-density computing market, as well as NAND Flash products sold to Intel through IM Flash.
***Embedded Solutions Group ("ESG"):*** Includes DRAM, NAND Flash and NOR Flash products sold into automotive and industrial applications, as well as NOR and NAND Flash sold to consumer electronics, networking, PC and server markets.
***Wireless Solutions Group ("WSG"):*** Includes DRAM, NAND Flash and NOR Flash products, including multi-chip packages, sold to the mobile device market.

Our other operations do not meet the quantitative thresholds of a reportable segment and are reported under All Other.

Certain operating expenses directly associated with the activities of a specific reportable segment are charged to that segment. Other indirect operating expenses (income) are generally allocated to the reportable segments based on their respective percentage of total net sales, cost of goods sold or forecasted wafer production. In the second quarter of 2013, we reclassified the (gains) losses from changes in currency exchange rates from other operating (income) expense, net to other non-operating income (expense), net in the consolidated statements of income. As a result, the (gains) losses from changes in currency exchange rates has been reclassified out of operating income (loss) for our segments for the first quarter of 2013 and second quarter and first six months of 2012.

We do not identify or report internally our assets or capital expenditures by segment, nor do we allocate gains and losses from equity method investments, interest, other non-operating income or expense items or taxes to operating segments. There are no differences in the accounting policies for segment reporting and our consolidated results of operations.

| | Quarter Ended | | Six Months Ended | |
|---|---|---|---|---|
| | **February 28, 2013** | **March 1, 2012** | **February 28, 2013** | **March 1, 2012** |
| Net sales: | | | | |
| DSG | $ 756 | $ 608 | $ 1,356 | $ 1,264 |
| NSG | 713 | 734 | 1,330 | 1,417 |
| ESG | 282 | 242 | 560 | 504 |
| WSG | 213 | 307 | 476 | 680 |
| All Other | 114 | 118 | 190 | 234 |
| | $ 2,078 | $ 2,009 | $ 3,912 | $ 4,099 |
| | | | | |
| Operating income (loss): | | | | |
| DSG | $ (46) | $ (167) | $ (158) | $ (302) |
| NSG | 64 | 99 | 77 | 198 |
| ESG | 65 | 15 | 143 | 54 |
| WSG | (87) | (129) | (151) | (185) |
| All Other | (19) | (22) | (31) | (40) |
| | $ (23) | $ (204) | $ (120) | $ (275) |

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

*As used herein, "we," "our," "us" and similar terms include Micron Technology, Inc. and its subsidiaries, unless the context indicates otherwise. The following discussion contains trend information and other forward-looking statements that involve a number of risks and uncertainties. Forward-looking statements include, but are not limited to, statements such as those made in "Overview" regarding our proposed acquisition of Elpida; in "Net Sales" regarding the timing of the closing of our sale of MIT; in "Selling, General and Administrative" regarding SG&A costs for the third quarter of 2013; in "Research and Development" regarding R&D costs for the third quarter of 2013; and in "Liquidity and Capital Resources" regarding the sufficiency of our cash and investments, cash flows from operations and available financing to meet our requirements at least through the next twelve months and regarding our pursuit of additional financing, capital spending in 2013, the timing of payments for certain contractual obligations and the timing of payments in connection with the Elpida transactions. Our actual results could differ materially from our historical results and those discussed in the forward-looking statements. Factors that could cause actual results to differ materially include, but are not limited to, those identified in "Item 1A. Risk Factors." This discussion should be read in conjunction with the Consolidated Financial Statements and accompanying notes for the year ended August 30, 2012. All period references are to our fiscal periods unless otherwise indicated. Our fiscal year is the 52 or 53-week period ending on the Thursday closest to August 31 and fiscal 2013 and 2012 each contained 52 weeks. All production data includes the production of our consolidated joint ventures and our other partnering arrangements. All tabular dollar amounts are in millions.*

Our Management's Discussion and Analysis of Financial Condition and Results of Operations ("MD&A") is provided in addition to the accompanying consolidated financial statements and notes to assist readers in understanding our results of operations, financial condition and cash flows. MD&A is organized as follows:

- ***Overview:*** An overview of our business and operations and highlights of key transactions and events.
- ***Results of Operations:*** An analysis of our financial results consisting of the following:
  - Consolidated results;
  - Operating results by business segment;
  - Operating results by product; and
  - Operating expenses and other.
- ***Liquidity and Capital Resources:*** An analysis of changes in our balance sheet and cash flows and discussion of our financial condition and potential sources of liquidity.
- ***Off-Balance Sheet Arrangements:*** Contingent liabilities, commitments and off-balance sheet arrangements.

### Overview

We are one of the world's leading providers of advanced semiconductor solutions. Through our worldwide operations, we manufacture and market a full range of DRAM, NAND Flash and NOR Flash memory, as well as other innovative memory technologies, packaging solutions and semiconductor systems for use in leading-edge computing, consumer, networking, automotive, industrial, embedded and mobile products. We market our products through our internal sales force, independent sales representatives and distributors primarily to original equipment manufacturers ("OEMs") and retailers located around the world. Our success is largely dependent on the market acceptance of our diversified portfolio of semiconductor products, efficient utilization of our manufacturing infrastructure, successful ongoing development of advanced process technologies and the return on research and development ("R&D") investments.

We obtain products from three primary sources: (1) production from our wholly-owned manufacturing facilities, (2) production from our joint venture manufacturing facilities, and (3) to a lesser degree, from third party manufacturers. In recent years, we have increased our manufacturing scale and product diversity through strategic acquisitions and various partnering arrangements, including joint ventures, which have helped us to attain lower costs than we could otherwise achieve through internal investments alone.

We make significant investments to develop the proprietary product and process technologies that are implemented in our worldwide manufacturing facilities and through our joint ventures. These investments enable our production of semiconductor products with increasing functionality and performance at lower costs. We generally reduce the manufacturing cost of each generation of product through advancements in product and process technology such as our leading-edge line-width process technology and innovative array architecture. We continue to introduce new generations of products that offer improved performance characteristics, such as higher data transfer rates, reduced package size, lower power consumption, improved read/write reliability and increased memory density. To leverage our significant investments in R&D, we have formed, and may continue to form, strategic joint ventures that allow us to share the costs of developing memory product and process technologies with joint venture partners. In addition, from time to time, we also sell and/or license technology to other parties. We continue to pursue additional opportunities to monetize our investment in intellectual property through partnering and other arrangements.

We have the following four reportable segments:

***DRAM Solutions Group ("DSG"):*** Includes DRAM products sold to the PC, consumer electronics, networking and server markets.

***NAND Solutions Group ("NSG"):*** Includes high-volume NAND Flash products sold into data storage, personal music players, and the high-density computing market, as well as NAND Flash products sold to Intel through IM Flash.

***Embedded Solutions Group ("ESG"):*** Includes DRAM, NAND Flash and NOR Flash products sold into automotive and industrial applications, as well as NOR and NAND Flash sold to consumer electronics, networking, PC and server markets.

***Wireless Solutions Group ("WSG"):*** Includes DRAM, NAND Flash and NOR Flash products, including multi-chip packages, sold to the mobile device market.

Our other operations do not meet the quantitative thresholds of a reportable segment and are reported under All Other.

**Proposed Acquisition of Elpida Memory, Inc.**

On July 2, 2012, we entered into an "Agreement on Support for Reorganization Companies" (the "Sponsor Agreement") with the trustees of Elpida Memory, Inc. ("Elpida") and its subsidiary, Akita Elpida Memory, Inc. ("Akita" and, together with Elpida, the "Elpida Companies"), which provides for, among other things, our acquisition of Elpida and our support for the plans of reorganization of the Elpida Companies in connection with their corporate reorganization proceedings in Japan. The Elpida Companies filed petitions for commencement of corporate reorganization proceedings with the Tokyo District Court (the "Japan Court") under the Corporate Reorganization Act of Japan on February 27, 2012. Under the Sponsor Agreement, we committed to support plans of reorganization for the Elpida Companies that would provide payments to the secured and unsecured creditors of the Elpida Companies in an aggregate amount of 200 billion yen (or the equivalent of approximately $2.17 billion, assuming approximately 92 yen per U.S. dollar, the exchange rate as of February 28, 2013), less certain expenses of the reorganization proceedings and certain other items.

The Sponsor Agreement provides that we will invest 60 billion yen (or the equivalent of approximately $650 million) in cash in Elpida at the closing in exchange for 100% ownership of Elpida's equity. As a condition to the execution of the Sponsor Agreement, we deposited 1.8 billion yen (or the equivalent of approximately $20 million) into an escrow account in July 2012, which will be applied towards our purchase price for the Elpida shares at closing. The Elpida Companies will use the proceeds of our investment to fund an initial installment payment to their creditors of 60 billion yen, which amount is subject to reduction for certain items specified in the Sponsor Agreement. The initial installment payment will be made within three months following the closing of our acquisition of Elpida. The remaining 140 billion yen (or the equivalent of approximately $1.52 billion) of installment payments payable to the Elpida Companies' creditors will be made by the Elpida Companies in six annual installments payable at the end of each calendar year beginning in the calendar year after the first installment payment is made. We or one of our subsidiaries are committed to enter into a supply agreement with Elpida following the closing, which will provide for our purchase on a cost-plus basis of all product produced by Elpida. Cash flows from such supply agreement will be used to satisfy the required installment payments under the plans of reorganization.

In a related transaction, on July 2, 2012, we entered into a share purchase agreement with Powerchip Technology Corporation and certain of its affiliates (the "Rexchip Share Purchase Agreement"), under which we will purchase approximately 714 million shares of Rexchip Electronics Corporation ("Rexchip") common stock, which represents approximately 24% of Rexchip's outstanding common stock, for approximately 10 billion New Taiwan dollars (or the equivalent of approximately $338 million, assuming approximately 30 New Taiwan dollars per U.S. dollar, the exchange rate as of February 28, 2013). Elpida currently owns, directly and indirectly through a subsidiary, 65% of Rexchip's outstanding common stock.

Elpida's assets include, among other things: a 300mm DRAM wafer fabrication facility located in Hiroshima, Japan; its ownership interest in Rexchip, whose assets include a 300mm DRAM wafer fabrication facility located in Taiwan; and an assembly and test facility located in Akita, Japan. We expect that the Elpida and Rexchip fabrication facilities together are capable of producing more than 180,000 300mm wafers per month, which would represent an approximate 45% increase in our current trade wafer capacity.

Elpida's semiconductor memory products include Mobile DRAM, targeted toward mobile phones and tablets. We believe that the Elpida Company's product portfolio is complementary to ours and combining the two will strengthen our position in the memory market and enable us to provide customers with a wider portfolio of high-quality solutions. We also believe that the Elpida transactions will strengthen our market position in the memory industry through increased research and development and manufacturing scale, improved access to core memory market segments, and additional wafer capacity to balance among our DRAM, NAND Flash and NOR Flash memory solutions.

The consummation of the Sponsor Agreement remains subject to completion or waiver of certain conditions, including:

i. the finalization of the order of the Japan Court approving the plans of reorganization of the Elpida Companies, which order with respect to the Elpida plan of reorganization has been appealed by certain creditors of Elpida. On February 26, 2013, the Elpida Companies' creditors approved the reorganization plans and on February 28, 2013, the Japan Court issued an order approving the plans of reorganization. On March 29, 2013, certain creditors of Elpida filed appeals with the Tokyo High Court of the Japan Court's order approving Elpida's plan of reorganization. Timing of the Tokyo High Court appeal process depends on a number of factors outside of our control and is impossible to predict with accuracy;

ii. the granting of a recognition order by the U.S. Court with respect to the Japan Court's approval of the Elpida plan of reorganization or the completion or implementation of alternative actions providing substantially equivalent benefits; and

iii. the closing of the purchase of the Rexchip shares from the Powerchip Group under the Rexchip Share Purchase Agreement described below.

There can be no assurance that the various conditions will be satisfied or that the Elpida acquisition will ultimately be consummated on the terms and conditions set forth in the Sponsor Agreement. Various creditors are challenging Elpida's proposed plan of reorganization and related requests for relief, both in the Japan Proceedings and the U.S. Proceedings. If the requisite court approvals and decisions are not obtained or the closing conditions are not satisfied or waived, we will not be able to close the acquisitions. We believe the Japan Court's approval of Elpida's reorganization plan will be upheld by the Tokyo High Court, that the other requirements for closing will be achieved and that we will close the acquisitions. However, we cannot be certain what effect, if any, challenges by the creditors will have on the timing of the closing.

In connection with the Elpida and Rexchip acquisition agreements, on July 2, 2012, we entered into a series of currency option contracts to hedge our exposure to the yen and New Taiwan dollar denominated acquisition payments under these agreements, pursuant to which we purchased call options to buy 200 billion yen, sold put options to sell 100 billion yen and sold call options to buy 100 billion yen. As a result of the mark-to-market adjustments for the yen hedge, we recorded losses to other non-operating expense of $114 million and $62 million in the second and first quarters of 2013, respectively. As of February 28, 2013, our cumulative loss on the yen hedge was $168 million. In the third quarter of 2013, we recorded additional losses of $23 million on the yen hedge through its settlement on March 26, 2013. We paid $191 million on settlement. As a result of the weaker yen since the inception of the hedge on July 2, 2012, the U.S. dollar equivalent of the 200 billion yen to be paid to the secured and unsecured creditors of the Elpida Companies had decreased by $338 million as of February 28, 2013.

On March 26, 2013, we executed a series of separate currency exchange transactions pursuant to which we purchased forward contracts to buy 80 billion yen and purchased put options to sell 80 billion yen. These forward contracts and put options, which expire on September 25, 2013, mitigate the risk of a strengthening yen for certain of our yen-denominated payments under the Sponsor Agreement while preserving some ability for us to benefit if the value of the yen weakens relative to the U.S. dollar.

See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Proposed Acquisition of Elpida Memory, Inc." for further details of the proposed transactions.

**Inotera Memories, Inc.**

On January 17, 2013, we entered into agreements with Nanya Technology Corporation ("Nanya") to amend the joint venture relationship involving Inotera. The amendments include a new supply agreement (the "Inotera Supply Agreement") between us and Inotera under which we will purchase for an initial three-year term substantially all of Inotera's output at a purchase price based on a discount from actual market prices for our comparable components. The Inotera Supply Agreement contemplates annual negotiations with respect to potential successive one-year extensions and if in any year the parties do not agree to an extension, the agreement will terminate following the end of the then-existing term and a subsequent three-year wind-down period. Our share of Inotera's capacity would decline over the three year wind-down period. The Inotera Supply Agreement was retroactively effective beginning on January 1, 2013. Effective through December 31, 2012, we had rights and obligations to purchase 50% of Inotera's wafer production capacity based on a margin-sharing formula among Nanya, Inotera and us. Our cost of product purchased from Inotera under the supply agreements as $200 million for the second quarter of 2013, $201 million for the first quarter of 2013 and $142 million for the second quarter of 2012.

Prior to January 17, 2013, under a cost-sharing arrangement, we generally shared DRAM development costs with Nanya under a joint development program. As a result of the January 17, 2013 agreements, which were retroactively effective beginning on January 1, 2013, Nanya no longer participates in the joint development program. Pursuant to the cost-sharing arrangement with Nanya, our R&D costs were reduced by $4 million in the second quarter of 2013, $15 million in the first quarter of 2013 and $36 million in the second quarter of 2012.

## Results of Operations

**Consolidated Results**

| | Second Quarter | | | | First Quarter | | Six Months | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2013 | % of net sales | 2012 | % of net sales | 2013 | % of net sales | 2013 | % of net sales | 2012 | % of net sales |
| | (amounts in millions and as a percent of net sales) | | | | | | | | | |
| Net sales | $ 2,078 | 100 % | $ 2,009 | 100 % | $ 1,834 | 100 % | $ 3,912 | 100 % | $ 4,099 | 100 % |
| Cost of goods sold | 1,712 | 82 % | 1,799 | 90 % | 1,617 | 88 % | 3,329 | 85 % | 3,584 | 87 % |
| Gross margin | 366 | 18 % | 210 | 10 % | 217 | 12 % | 583 | 15 % | 515 | 13 % |
| SG&A | 123 | 6 % | 174 | 9 % | 119 | 6 % | 242 | 6 % | 325 | 8 % |
| R&D | 214 | 10 % | 222 | 11 % | 224 | 12 % | 438 | 11 % | 452 | 11 % |
| Other operating (income) expense, net | 52 | 3 % | 18 | 1 % | (29) | (2)% | 23 | 1 % | 13 | — % |
| Operating loss | (23) | (1)% | (204) | (10)% | (97) | (5)% | (120) | (3)% | (275) | (7)% |
| Interest income (expense), net | (53) | (3)% | (33) | (2)% | (54) | (3)% | (107) | (3)% | (66) | (2)% |
| Other non-operating income (expense), net | (159) | (8)% | 37 | 2 % | (59) | (3)% | (218) | (6)% | 26 | 1 % |
| Income tax (provision) benefit | 9 | — % | (9) | — % | (13) | (1)% | (4) | — % | (7) | — % |
| Equity in net loss of equity method investees | (58) | (3)% | (73) | (4)% | (52) | (3)% | (110) | (3)% | (147) | (4)% |
| Net income attributable to noncontrolling interests | (2) | — % | — | — % | — | — % | (2) | — % | — | — % |
| Net loss attributable to Micron | $ (286) | (14)% | $ (282) | (14)% | $ (275) | (15)% | $ (561) | (14)% | $ (469) | (11)% |

Our net loss for the second quarter of 2013 was slightly higher than the first quarter of 2013 as a $149 million improvement in our overall gross margin was more than offset by an increase in losses recognized in other operating expense and other non-operating expense. Our gross margin for the second quarter of 2013 improved from the first quarter of 2013 primarily due to cost reductions partially offset by declines in average selling prices. Significant items in other operating expense and other non-operating expenses for the second and first quarters of 2013 included the following:

- other operating loss for the second quarter of 2013 included a $62 million impairment loss as a result of an agreement to sell our 200mm wafer fabrication facility assets in Avezzano, Italy:
- other operating income for the first quarter of 2013 included a $25 million gain from the termination of a lease by Transform to a portion of our manufacturing facilities in Boise, Idaho as part of Transform's operations being discontinued;
- other non-operating expense for the second and first quarters of 2013 included losses of $120 million and $58 million, respectively, on currency hedges for the Elpida and Rexchip transaction; and
- other non-operating expense for the second quarter of 2013 included a $31 million charge associated with the early liquidation of debt.

Our net loss attributable to Micron shareholders for the second quarter of 2013 was relatively unchanged from the second quarter of 2012 as a $156 million improvement in our gross margin was offset by losses recognized in other operating expense and other non-operating expense. Our gross margin for the second quarter of 2013 improved from the second quarter of 2012 primarily due to cost reductions partially offset by declines in average selling prices. Other non-operating income for the second quarter of 2012 included a $39 million gain from the sale of an investment.

In the second quarter of 2013, we reclassified (gains) losses from changes in currency exchange rates from other operating (income) expense, net to other non-operating income (expense), net in the consolidated statements of income. As a result, segment operating income (loss) for the comparative periods presented no longer includes the (gains) losses from changes in currency exchange rates to conform to current period presentation. (See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Business and Basis of Presentation".)

***Net Sales***

| | Second Quarter | | | | First Quarter | | Six Months | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2013 | % of net sales | 2012 | % of net sales | 2013 | % of net sales | 2013 | % of net sales | 2012 | % of net sales |
| DSG | $ 756 | 36% | $ 608 | 30% | $ 600 | 33% | $ 1,356 | 35% | $ 1,264 | 31% |
| NSG | 713 | 34% | 734 | 37% | 617 | 34% | 1,330 | 34% | 1,417 | 35% |
| ESG | 282 | 14% | 242 | 12% | 278 | 15% | 560 | 14% | 504 | 12% |
| WSG | 213 | 10% | 307 | 15% | 263 | 14% | 476 | 12% | 680 | 17% |
| All Other | 114 | 6% | 118 | 6% | 76 | 4% | 190 | 5% | 234 | 5% |
| | $ 2,078 | 100% | $ 2,009 | 100% | $ 1,834 | 100% | $ 3,912 | 100% | $ 4,099 | 100% |

Total net sales for the second quarter of 2013 increased 13% as compared to the first quarter of 2013 primarily due to the following:

- increases in DSG sales due to increases in gigabit sales partially offset by declines in average selling prices,
- increases in NSG sales due to increases in gigabit sales and average selling prices, and
- decreases in WSG sales due to lower sales of NAND Flash and NOR Flash products as a result of declines in gigabit sales and average selling prices.

Total net sales for the second quarter of 2013 increased 3% as compared to the second quarter of 2012 primarily due to increases in DSG and ESG sales due to increases in gigabit sales partially offset by declines in average selling prices. WSG and NSG sales for the second quarter of 2013 decreased from the second quarter of 2012 primarily due to declines in selling prices mitigated by increases in gigabit sales for NSG. Total net sales for the first six months of 2013 decreased 5% as compared to the first six months of 2012 primarily due decreases in WSG and NSG sales partially offset by increases in DSG and ESG sales.

Sales of CMOS image sensors constitute the majority of sales for All Other segments. On February 25, 2013, we entered into an agreement to sell Micron Technology Italia, S.r.l., ("MIT") a wholly-owned subsidiary, including its 200mm wafer fabrication facility assets in Avezzano, Italy, to LFoundry Marsica S.r.l. ("LFoundry"). Under the agreements, we will assign to LFoundry our supply agreement with Aptina Imaging Corporation ("Aptina") for CMOS image sensors manufactured at the Avezzano facility. We expect to close the transaction in the third quarter of 2013 after which time we will cease to sell CMOS image sensors. In recent years, our margins on sales of CMOS image sensors have been insignificant. (See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Micron Technology Italia, S.r.l.")

***Gross Margin***

Our overall gross margin percentage for the second quarter of 2013 improved to 18% from 12% for the first quarter of 2013 as a result of margin improvements from sales of both NAND Flash and DRAM products due to decreases in manufacturing costs and lower costs of DRAM products purchased from Inotera.

Our overall gross margin percentage for the second quarter of 2013 improved to 18% from 10% for the second quarter of 2012 primarily due to reductions in cost per gigabit partially offset by declines in average selling prices. Our overall gross margin percentage for the first six months of 2013 improved to 15% from 13% for the first six months of 2012 primarily due to reductions in cost per gigabit partially offset by declines in average selling prices.

**Operating Results by Business Segments**

***DRAM Solutions Group ("DSG")***

| | Second Quarter | | First Quarter | Six Months | |
|---|---|---|---|---|---|
| | 2013 | 2012 | 2013 | 2013 | 2012 |
| Net sales | $ 756 | $ 608 | $ 600 | $ 1,356 | $ 1,264 |
| Operating income (loss) | (46) | (167) | (112) | (158) | (302) |

DSG sales and operating results track closely with our average selling prices, gigabit sales volumes and cost per gigabit for our consolidated sales of DRAM products. (See "Operating Results by Product – DRAM" for further detail.) DSG sales for the second quarter of 2013 increased 26% as compared to the first quarter of 2013 primarily due to increases in gigabit sales. Increases in gigabit sales for the second quarter of 2013 were primarily due to additional supply obtained from Inotera as a result of revisions to the supply agreement effective January 1, 2013. DSG average selling prices for the second quarter declined from the first quarter of 2013 primarily due to a shift in product mix to a higher proportion of DDR3 DRAM products as a result of the additional supply from Inotera. DDR3 DRAM products have significantly lower average selling prices and costs per gigabit than our other DRAM products. DSG's operating margin for the second quarter of 2013 improved as compared to the first quarter of 2013 primarily due to cost reductions resulting from new pricing terms under the supply agreement with Inotera and improved product and process technologies.

DSG sales for the second quarter and first six months of 2013 increased 24% and 7%, respectively, as compared to the corresponding periods of 2012 primarily due to increases in gigabit sales partially offset by lower average selling prices. DSG's operating margin for the second quarter and first six months of 2013 improved as compared to the corresponding periods of 2012 despite the declines in average selling prices, primarily due to cost reductions as a result of improved product and process technologies and improved pricing under the Inotera supply agreement.

***NAND Solutions Group ("NSG")***

| | Second Quarter | | First Quarter | Six Months | |
|---|---|---|---|---|---|
| | 2013 | 2012 | 2013 | 2013 | 2012 |
| Net sales | $ 713 | $ 734 | $ 617 | $ 1,330 | $ 1,417 |
| Operating income | 64 | 99 | 13 | 77 | 198 |

NSG sales and operating results track closely with our average selling prices, gigabit sales volumes and cost per gigabit for our consolidated sales of NAND Flash products. (See "Operating Results by Product – NAND Flash" for further detail.) NSG overall sales for the second quarter of 2013 increased 16% as compared to the first quarter of 2013 primarily due to increased sales volume. NSG sells a portion of its products to Intel Corporation ("Intel") through IM Flash at long-term negotiated prices approximating cost. All other NSG products are sold to OEMs, resellers, retailers and other customers (including Intel), which we collectively refer to as "trade customers."

NSG sales of NAND Flash products to trade customers for the second quarter of 2013 increased 21% as compared to the first quarter of 2013 primarily due to increases in gigabits sold as a result of production increases from higher output of 20nm devices and as a result of higher average selling prices. NSG operating income increased for the second quarter of 2013 as compared to the first quarter of 2013 primarily due to improvements in average selling prices.

On April 6, 2012, we acquired Intel's remaining ownership interest in IM Flash Singapore, LLP ("IMFS") and the assets of IM Flash Technologies, LLC ("IMFT") located at our Virginia fabrication facility and terminated the IMFS supply agreement. Accordingly, we now obtain all of the NAND Flash output from our Singapore and Virginia wafer fabrication facilities. On April 6, 2012, we also entered into a new supply agreement with Intel under which Intel purchases NAND Flash products under negotiated arrangements. Aggregate NSG sales to Intel (including sales by IMFT at prices approximating cost and sales by us under the negotiated arrangements) were $160 million for the second quarter of 2013, $148 million for the first quarter of 2013 and $255 million for the second quarter of 2012.

NSG's overall sales for the second quarter and first six months of 2013 decreased 3% and 6%, respectively, as compared to the corresponding periods of 2012 primarily due to declines in average selling prices and decreases in sales to Intel through IM Flash at prices approximating cost as a result of the restructure of our IM Flash agreement with Intel in April 2012, partially offset by increases in NSG sales to trade customers. NSG sales of NAND Flash products to trade customers for the second quarter and first six months of 2013 increased 28% and 24%, respectively, as compared to the corresponding periods of 2012 primarily due to increases in gigabits sold partially offset by declines in average selling prices. NSG operating income declined for the second quarter and first six months of 2013 as compared to the corresponding periods of 2012 primarily due to decreases in average selling prices mitigated by cost reductions.

***Embedded Solutions Group ("ESG")***

| | Second Quarter | | First Quarter | Six Months | |
|---|---|---|---|---|---|
| | 2013 | 2012 | 2013 | 2013 | 2012 |
| Net sales | $ 282 | $ 242 | $ 278 | $ 560 | $ 504 |
| Operating income | 65 | 15 | 78 | 143 | 54 |

In the second quarter of 2013, ESG sales were comprised of NOR Flash, DRAM and NAND Flash in decreasing order of revenue. ESG sales for the second quarter of 2013 were relatively unchanged as compared to the first quarter of 2013 as increases in gigabit sales were offset by declines in average selling prices. ESG operating income for the second quarter of 2013 declined as compared to the first quarter of 2013 primarily due to decreases in average selling prices mitigated by cost reductions.

ESG sales for the second quarter and first six months of 2013 increased 17% and 11% respectively, as compared to the corresponding periods of 2012 primarily due to increased sales volumes in all product groups. ESG operating income for the second quarter and first six months of 2013 improved as compared to the corresponding periods of 2012 primarily due to manufacturing cost reductions partially offset by declines in average selling prices.

***Wireless Solutions Group ("WSG")***

| | Second Quarter | | First Quarter | Six Months | |
|---|---|---|---|---|---|
| | 2013 | 2012 | 2013 | 2013 | 2012 |
| Net sales | $ 213 | $ 307 | $ 263 | $ 476 | $ 680 |
| Operating income (loss) | (87) | (129) | (64) | (151) | (185) |

In the second quarter of 2013, WSG sales were primarily comprised of NAND Flash, NOR Flash and DRAM in decreasing order of revenue. WSG sales for the second quarter of 2013 decreased 19% as compared to the first quarter of 2013 primarily due to decreased sales volumes of NAND Flash and NOR Flash products and declines in average selling prices. WSG operating margin for the second quarter of 2013 declined as compared to the first quarter of 2013 primarily due to declines in average selling prices.

WSG sales for the second quarter and first six months of 2013 decreased 31% and 30%, respectively, as compared to the corresponding periods of 2012 primarily due to declines in sales of wireless NOR Flash products as a result of weakness in market demand and our customer group in particular, as well as a continued transition by customers to NAND Flash. WSG sales for the second quarter and first six months of 2013 were also adversely impacted by lower sales of NAND Flash products sold in multi-chip packages as compared to the corresponding periods of 2012. WSG experienced pricing pressure in the second quarter and first six months of 2013 due to continued weakness in demand from certain customers. WSG operating margins improved for the second quarter and first six months of 2013 as compared to the corresponding periods of 2012 primarily due to cost reductions partially offset by lower average selling prices.

**Operating Results by Product**

***Net Sales by Product***

| | Second Quarter | | | | First Quarter | | Six Months | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| | 2013 | % of net sales | 2012 | % of net sales | 2013 | % of net sales | 2013 | % of net sales | 2012 | % of net sales |
| DRAM | $ 891 | 43% | $ 729 | 36% | $ 720 | 39% | $ 1,611 | 41% | $ 1,507 | 37% |
| NAND Flash | 870 | 42% | 934 | 46% | 803 | 44% | 1,673 | 43% | 1,843 | 45% |
| NOR Flash | 197 | 9% | 228 | 11% | 228 | 12% | 425 | 11% | 515 | 13% |
| Other | 120 | 6% | 118 | 7% | 83 | 5% | 203 | 5% | 234 | 5% |
| | $ 2,078 | 100% | $ 2,009 | 100% | $ 1,834 | 100% | $ 3,912 | 100% | $ 4,099 | 100% |

***DRAM***

| | Second Quarter 2013 Versus | | First Six Months 2013 Versus |
|---|---|---|---|
| | First Quarter 2013 | Second Quarter 2012 | First Six Months 2012 |
| | (percentage change from period indicated) | | |
| Net sales | 24 % | 22 % | 7 % |
| Average selling prices per gigabit | (10)% | (15)% | (21)% |
| Gigabits sold | 38 % | 43 % | 35 % |
| Cost per gigabit | (18)% | (26)% | (25)% |

The increase in gigabit sales of DRAM products for the second quarter of 2013 as compared to the first quarter of 2013 and second quarter of 2012 was primarily due to additional supply from Inotera and from higher DRAM production as a result of strong operational performance. Effective on January 1, 2013, we entered into the new Inotera Supply Agreement under which we purchase substantially all of Inotera's output at a purchase price based on a discount from actual market prices for our comparable components. Prior to the new Inotera Supply Agreement we had the right to purchase 50% of Inotera's wafer production capacity based on a margin-sharing formula among Nanya, Inotera and us. (See "Overview – Inotera Memories, Inc.") Our cost of product purchased from Inotera under the supply agreements was $200 million for the second quarter of 2013, $201 million for the first quarter of 2013 and $142 million for the second quarter of 2012. Our cost per gigabit of products purchased under the new Inotera Supply Agreement in the second quarter of 2013 was lower than our cost of similar products manufactured in our wholly-owned facilities.

Due to significant market declines in the selling prices of DRAM, Inotera incurred net losses of $541 million for its year ended December 31, 2012. Also, Inotera's current liabilities exceeded its current assets by $1.76 billion as of December 31, 2012, which exposes Inotera to liquidity risk. As of December 31, 2012, Inotera was not in compliance with certain loan covenants, and had not been in compliance for the past several years. Inotera has requested a waiver from complying with the December 31, 2012 financial covenants and Inotera's creditors have until May 3, 2013 to respond. Inotera's management has developed plans to improve its liquidity, but there can be no assurance that Inotera will be successful in obtaining a waiver from complying with its financial covenants as of December 31, 2012 or improving its liquidity, which may result in its lenders requiring repayment of such loans during the next year.

Average selling prices on sales of DRAM product for the second quarter of 2013 declined from the first quarter of 2013 primarily due to a shift in product mix to a higher proportion of DDR3 DRAM products as a result of the additional supply from Inotera. DDR3 DRAM products have significantly lower average selling prices per gigabit and cost per gigabit than our other DRAM products. Average selling prices for DDR3 DRAM products for the second quarter of 2013 increased 7% as compared to the first quarter of 2013.

The gross margin percentage on sales of DRAM products for second quarter of 2013 improved as compared to the first quarter of 2013 and second quarter of 2012 primarily due to cost reductions partially offset by the declines in average selling prices.

***NAND Flash***

We sell a portion of our output of NAND Flash products to Intel through IM Flash at long-term negotiated prices approximating cost. (See "Operating Results by Business Segments – NAND Solutions Group" for further detail.) We sell the remainder of our NAND Flash products to trade customers (including Intel).

| | Second Quarter 2013 Versus | | First Six Months 2013 Versus |
|---|---|---|---|
| | First Quarter 2013 | Second Quarter 2012 | First Six Months 2012 |
| | (percentage change from period indicated) | | |
| Sales to trade customers: | | | |
| Net sales | 11 % | 13 % | 10 % |
| Average selling prices per gigabit | (1)% | (37)% | (44)% |
| Gigabits sold | 13 % | 81 % | 97 % |
| Cost per gigabit | (5)% | (35)% | (39)% |

Increases in NAND Flash gigabits sold to trade customers for the second quarter of 2013 as compared to the first quarter of 2012 was primarily due to improved product and process technologies and higher output of 20nm devices. Increases in NAND Flash gigabits sold to trade customers for the second quarter and first six months of 2013 as compared to the corresponding periods of 2012 was primarily due to improved product and process technologies, increased output available for sale to trade customers due to the restructure of our IM Flash agreement with Intel in April 2012 and the ramp-up of a new fabrication facility in Singapore throughout 2012. Cost reductions in the second quarter of 2013 as compared to the first quarter of 2013 and second quarter of 2012 reflect improvements in product and process technologies. The gross margin percentage on sales of NAND Flash products for second quarter of 2013 improved as compared to the first quarter of 2013 and second quarter of 2012 as cost reductions outpaced the declines in average selling prices.

***NOR Flash***

Sales of NOR Flash products for the second quarter of 2013 declined as compared to the first quarter of 2013 primarily due to lower average selling prices and reduced sales volumes. Our gross margin percentage on sales of NOR Flash products declined for the second quarter of 2013 as compared to the first quarter of 2013 primarily due to declines in average selling prices.

Sales of NOR Flash products for the second quarter and first six months of 2013 declined as compared to the corresponding periods of 2012 primarily due to decreases in sales of wireless products as a result of weakness in demand from certain customers and the continued transition of wireless applications to NAND Flash products, which led to significant declines in average selling prices. Our gross margin percentage on sales of NOR Flash products increased for the second quarter and first six months of 2013 as compared to the corresponding periods of 2012 primarily due to cost reductions.

**Operating Expenses and Other**

***Selling, General and Administrative***

Selling, general and administrative ("SG&A") expenses for the second quarter of 2013 increased 3% as compared to the first quarter of 2013. SG&A expenses for the second quarter and first six months of 2013 decreased 29% and 26%, respectively, from the corresponding periods of 2012 due to lower payroll costs resulting primarily from the suspension of variable pay plans, a reduction in legal costs and a contribution to a university recognized in the second quarter of 2012. We expect that SG&A expenses will approximate $135 million to $145 million for the third quarter of 2013.

***Research and Development***

R&D expenses for the second quarter of 2013 decreased 4% from the first quarter of 2013 primarily due to a lower volume of development wafers processed offset by lower reimbursements under partnering arrangements. R&D expenses for the second quarter and first six months of 2013 decreased 4% and 3%, respectively, from the corresponding periods of 2012 primarily due to lower volumes of pre-qualification wafers processed and lower payroll costs resulting from the suspension of variable pay plans partially offset by lower reimbursements under partnering arrangements.

Pursuant to our restructuring of IMFT and IMFS in April 2012, we expanded our NAND Flash R&D cost-sharing agreement to include the development of certain emerging memory technologies, but did not change the cost-sharing percentage with respect to these technologies. As a result of amounts reimbursable from Intel, R&D expenses were reduced by $34 million for the second quarter of 2013, $32 million for the first quarter of 2013 and $20 million for the second quarter of 2012. Additionally, effective through December 31, 2012, we had a DRAM R&D cost-sharing arrangement with Nanya whereby R&D expenses were reduced by $4 million for the second quarter of 2013, $15 million for the first quarter of 2013 and $36 million for the second quarter of 2012. Effective January 1, 2013, Nanya ceased participating in the joint development program. We expect that R&D expenses, net of amounts reimbursable from our R&D partners, will be approximately $225 million to $235 million for the third quarter of 2013.

Our process technology R&D efforts are focused primarily on development of successively smaller line-width process technologies which are designed to facilitate our transition to next generation memory products. Additional process technology R&D efforts focus on the enablement of advanced computing and mobile memory architectures, the investigation of new opportunities that leverage our core semiconductor expertise and the development of new manufacturing materials. Product design and development efforts include our high density DDR3 and DDR4 DRAM and Mobile Low Power DDR DRAM products as well as high density and mobile NAND Flash memory (including multi-level and triple-level cell technologies), NOR Flash memory, specialty memory, phase-change memory, solid-state drives and other memory technologies and systems.

***Interest Income (Expense)***

Interest expense for the second quarter of 2013, first quarter of 2013 and second quarter of 2012, included aggregate amounts of non-cash interest expense, primarily for the amortization of debt discount and other costs, of $29 million, $29 million and $22 million, respectively.

***Other***

Further discussion of other operating and non-operating income and expenses can be found in the following notes contained in "Item 1. Financial Statements – Notes to Consolidated Financial Statements":

- Equity Method Investments
- Equity Plans
- Other Operating (Income) Expense, Net
- Other Non-operating Income (Expense), Net
- Income Taxes

## Liquidity and Capital Resources

| As of | February 28, 2013 | August 30, 2012 |
|---|---|---|
| Cash and equivalents and short-term investments: | | |
| Money market funds | $ 1,634 | $ 2,159 |
| Bank deposits | 288 | 239 |
| Government securities | 103 | 56 |
| Certificates of deposit | 93 | 31 |
| Commercial paper | 58 | 39 |
| Corporate bonds | 50 | 31 |
| Asset-backed securities | 2 | 4 |
| | $ 2,228 | $ 2,559 |
| | | |
| Long-term marketable investments | $ 546 | $ 374 |

Cash and equivalents in the table above included amounts held by IMFT of $92 million as of February 28, 2013 and $157 million as of August 30, 2012. Our ability to access funds held by IMFT to finance our other operations is subject to agreement by Intel and contractual limitations. Amounts held by IMFT are not anticipated to be available to finance our other operations.

To mitigate credit risk, we invest through high-credit-quality financial institutions and, by policy, generally limit the concentration of credit exposure by restricting investments with any single obligor. As of February 28, 2013, the tax effects of repatriating cash held by foreign subsidiaries where undistributed earnings have been indefinitely reinvested would not be significant.

Cash generated by operations is our primary source of liquidity. Our liquidity is highly dependent on selling prices for our products and the timing and level of our capital expenditures, both of which can vary significantly from period to period. Depending on conditions in the semiconductor memory market, our cash flows from operations and current holdings of cash and investments may not be adequate to meet our needs for capital expenditures and operations. As of February 28, 2013, we had a credit facility available that provides for up to $255 million of additional financing as detailed under "Financing Activities" below.

Our primary uses of cash include capital expenditures and debt repayments. In addition, if we are able to complete the Elpida acquisition, we will be obligated to make approximately $1 billion in cash payments at the closing of the transaction to acquire the equity of Elpida and the shares of Rexchip owned by Powerchip and its affiliates. We have agreed to provide additional financial support to Elpida, subject to certain conditions, which may include a payment guarantee under certain circumstances, to facilitate its continued access to working capital financing from third-party finance sources through the closing of the Elpida share purchase. We have also agreed to provide support for Elpida's capital expenditures of up to approximately $694 million including up to approximately $434 million prior to June 13, 2013, which may include us providing payment guarantees of third party financing under certain circumstances or direct financial support from Micron or one of its subsidiaries. Following the closing, the Elpida Companies will be responsible to make 200 billion yen (or the equivalent of approximately $2.17 billion) of installment payments to the Elpida Companies' creditors under their plans of reorganizations. See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Proposed Acquisition of Elpida Memory, Inc." for further details of our obligations related to the proposed Elpida acquisition and the obligations of the Elpida Companies under their plans of reorganization. We expect to pursue additional financing in the future as cost effective and strategic opportunities arise. We generally seek to obtain financing with low interest rates and limited covenants, including convertible notes and equipment and receivables financing. We expect our cash and investments, cash flows from operations and available financing will be sufficient to meet our requirements for at least the next twelve months.

**Operating Activities**

Net cash provided by operating activities was $470 million for the first six months of 2013, which reflected approximately $827 million generated from the production and sales of our products offset by a net $357 million effect from changes in the amount invested in net working capital.

**Investing Activities**

Net cash used for investing activities was $999 million for the first six months of 2013, which consisted primarily of cash expenditures of $761 million for property, plant and equipment and $232 million for the acquisition of available-for-sale securities (net of proceeds from sales and maturities of $198 million). We believe that to develop new product and process technologies, support future growth, achieve operating efficiencies and maintain product quality, we must continue to invest in manufacturing technologies, facilities, capital equipment and R&D. We estimate that capital spending for 2013 will be approximately $1.6 billion to $1.9 billion. The actual amounts for 2013 will vary depending on market conditions. As of February 28, 2013, we had commitments of approximately $375 million for the acquisition of property, plant and equipment, substantially all of which is expected to be paid within one year.

**Financing Activities**

Net cash provided by financing activities was $131 million for the first six months of 2013, which included $812 million of proceeds from issuance of debt and $73 million of proceeds from equipment sale-leaseback financing transactions partially offset by $587 million for repayments of debt and $130 million of payments on equipment purchase contracts.

On February 12, 2013, we issued $300 million of 1.625% Convertible Senior Notes due 2033 (the "2033E Notes") and $300 million of 2.125% Convertible Senior Notes due 2033 (the "2033F Notes" and together with the 2033E Notes, the "2033 Notes") at face value. Issuance costs for the 2033 Notes totaled $16 million. Concurrently with the issuance of the 2033 Notes, we paid $48 million to purchase the capped calls to partially offset the potentially dilutive effect if the 2033 Notes were converted into shares of our common stock. Additionally, on February 12, 2013, we repurchased $464 million of aggregate principal amount of our 1.875% Convertible Senior Notes due June 2014 for $477 million.

On October 2, 2012, we entered into a facility agreement to obtain financing collateralized by semiconductor production equipment. Subject to customary conditions, we could draw up to $214 million under the facility agreement. Amounts drawn are payable in 10 equal semi-annual installments beginning six months after the draw date. On October 18, 2012, we drew $173 million with interest at 2.4% per annum. On January 31, 2013, we drew the remaining $41 million with interest at 2.4% per annum. The facility agreement contains customary covenants and events of default.

On September 5, 2012, we entered into a three-year revolving credit facility. Under this credit facility, we can draw up to the lesser of $255 million or 80% of the net outstanding balance of a pool of certain trade receivables. Amounts drawn would be collateralized by a security interest in such receivables. The availability of the facility is subject to certain customary conditions, including the absence of any event or circumstance that has a material adverse effect on our business or financial condition. The revolving credit facility contains customary covenants and a repayment provision in the event that the maximum aging of the receivables exceeds a specified threshold. Interest is payable monthly on any outstanding principal balance at a variable rate equal to the 30-day Singapore Interbank Offering Rate plus 2.8% per annum. As of February 28, 2013, we had not drawn any amounts under this facility.

**Proposed Acquisition of Elpida Memory, Inc.**

On July 2, 2012, we entered into the Sponsor Agreement and the Rexchip Share Purchase Agreement that require aggregate payments by us of approximately 60 billion yen and 10 billion New Taiwan dollars, respectively, (or the equivalent of an aggregate of approximately $1 billion) at the closing of the transactions. The Elpida Companies will use the proceeds of our investment at the closing to fund an initial installment payment to their creditors of 60 billion yen (or the equivalent of approximately $650 million), which amount is subject to reduction for certain items specified in the Sponsor Agreement. The initial installment payment will be made within three months following the closing of our acquisition of Elpida. The Elpida Companies will make additional installment payments aggregating 140 billion yen (or the equivalent of approximately $1.52 billion) from 2014 through 2019. In addition, we will be required to make capital expenditures in furtherance of the planned technology road maps for the Elpida and Rexchip operations.

Pursuant to the Sponsor Agreement we agreed, subject to certain conditions, to provide certain support to Elpida with respect to obtaining financing for working capital purposes and capital expenditures. This support included a commitment to use reasonable best efforts to assist Elpida with the extension or replacement of Elpida's then existing working capital credit facility through the closing of the Elpida acquisition, which assistance may include the provision of a payment guarantee by us under certain circumstances. Under the Sponsor Agreement, we also agreed, subject to certain conditions, to use reasonable best efforts to assist the Elpida Companies in financing up to 64 billion yen (or the equivalent of approximately $694 million) of eligible capital expenditures incurred through June 30, 2014, including up to 40 billion yen (or the equivalent of approximately $434 million) incurred prior to June 30, 2013, which may include us providing payment guarantees of third party financing under certain circumstances or direct financial support from Micron or one of its subsidiaries.

As of February 28, 2013, we have provided payment guarantees related to financing of capital expenditures of 29 million euros (or the equivalent of approximately $38 million) and 6 billion yen (or the equivalent of approximately $65 million). We have also provided a payment guarantee relating to an extension of Elpida's existing working capital credit facility, which provides for aggregate borrowings in the amount of up to 10 billion yen (or the equivalent of approximately $108 million), with an outstanding borrowing as of February 28, 2013 of 8 billion yen (or the equivalent of approximately $87 million). We have entered into an omnibus reimbursement agreement with Elpida in connection with our financial support obligations under the Sponsor Agreement, whereby Elpida and certain of its subsidiaries have agreed, among other things, to reimburse us for any amounts that we are required to pay under or in connection with the payment guarantees. These obligations under the omnibus reimbursement agreement are collateralized by approximately 93% of the Rexchip shares held by Elpida and one of its subsidiaries. In the event we are required to make any payments to Elpida's lenders under the guarantees, our rights will be subrogated to those of the lenders, including any rights to exercise remedies with respect to collateral securing the underlying loans. Failure to close the Elpida acquisition would not relieve us of our obligations under the foregoing payment guarantees. Under the Sponsor Agreement, certain conditions require Elpida's cash balances to be below a certain level in order for capital expenditure financing support to be available to Elpida. As of February 28, 2013, these conditions were not satisfied. As a result, we will not be obligated to provide any such further support unless and until such conditions, as well as all other applicable conditions, are met.

In connection with the Elpida Sponsor Agreement, on July 2, 2012, we entered into a series of currency option contracts to hedge our exposure to the yen-denominated acquisition payments. We settled these options on March 26, 2013 and paid $191 million.

(See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Proposed Acquisition of Elpida Memory, Inc.")

**Contractual Obligations**

| As of February 28, 2013 | Total | Remainder of 2013 | 2014 | 2015 | 2016 | 2017 | 2018 and Thereafter |
|---|---|---|---|---|---|---|---|
| | | | (amounts in millions) | | | | |
| Notes payable [1] | $ 3,598 | $ 72 | $ 619 | $ 100 | $ 99 | $ 272 | $ 2,436 |
| Capital lease obligations [1] | 1,035 | 126 | 310 | 242 | 246 | 39 | 72 |
| Operating leases | 77 | 12 | 15 | 9 | 8 | 7 | 26 |

*[1] Amounts represent principal and interest cash payments over the life of debt obligations, including anticipated interest payments that are not recorded on our consolidated balance sheet. Any future redemption or conversion of convertible debt could impact the amount or timing of our cash payments.*

## Off-Balance Sheet Arrangements

In connection with our obligations to provide financial support to Elpida under the Sponsor Agreement, as of February 28, 2013, we had provided payment guarantees related to Elpida's financing of capital expenditures of 29 million euros (or $38 million) and 6 billion yen (or $65 million), and provided a payment guarantee related to an extension of Elpida's existing working capital credit facility, which provides for aggregate borrowing in the amount of up to 10 billion yen (or $108 million), with outstanding borrowings of 8 billion yen ($87 million). Our obligations under these guarantee arrangements are collateralized by rights to certain equipment and other assets of Elpida. (See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Proposed Acquisition of Elpida Memory, Inc.")

Concurrent with the issuance of the 2033E and 2033F Notes in February 2013, we entered into capped call transactions that have an initial strike price of approximately $10.93, subject to certain adjustments, and a cap price of $14.51 per share. (See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Micron Shareholders' Equity and Noncontrolling Interests in Subsidiaries" and "Debt".)

Concurrent with the issuance of the 4.25% Convertible Notes due 2013 in April 2009, we entered into capped call transactions (the "2009 Capped Calls") covering approximately 45.2 million shares of common stock with an initial strike price of approximately $5.08 per share and a cap price of $6.64 per share. The 2009 Capped Calls expired in October, 2012 and November, 2012. We elected cash settlement and received $24 million in the first quarter of 2013. (See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Micron Shareholders' Equity and Noncontrolling Interests in Subsidiaries – 2009 Capped Call Transactions".)

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

### Interest Rate Risk

We are exposed to interest rate risk related to our indebtedness and our investment portfolio. Substantially all of our indebtedness was at fixed interest rates. As a result, the fair value of our debt fluctuates based on changes in market interest rates. We estimate that, as of February 28, 2013, a hypothetical decrease in market interest rates of 1% would increase the fair value of our convertible notes and other notes by approximately $96 million. The increase in interest expense caused by a 1% increase in the interest rates of our variable-rate note would not be significant.

As of February 28, 2013, we held short-term debt investments of $167 million and long-term debt investments of $537 million that were subject to interest rate risk. We estimate that, as of February 28, 2013, a 0.5% increase in market interest rates would decrease the fair value of our short-term and long-term debt instruments by approximately $4 million.

### Foreign Currency Exchange Rate Risk

The information in this section should be read in conjunction with the information related to changes in the exchange rates of foreign currency in "Item 1A. Risk Factors." Changes in foreign currency exchange rates could materially adversely affect our results of operations or financial condition.

The functional currency for all of our operations is the U.S. dollar. As a result of our foreign operations, we incur costs and carry assets and liabilities that are denominated in foreign currencies. The substantial majority of our revenues are transacted in the U.S. dollar; however, significant amounts of our operating expenditures and capital purchases are incurred in or exposed to other currencies, primarily the euro, the shekel, the Singapore dollar and the yen. We have established currency risk management programs for our operating expenditures and capital purchases to hedge against fluctuations in fair value and the volatility of future cash flows caused by changes in exchange rates. We utilize currency forward and option contracts in these hedging programs. Our hedging programs reduce, but do not always entirely eliminate, the impact of currency exchange rate movements. We do not use derivative financial instruments for trading or speculative purposes.

To hedge our primary exposures to changes in currency exchange rates from our monetary assets and liabilities, we utilize a rolling hedge strategy with currency forward contracts that generally mature within 35 days. Based on our foreign currency exposures from monetary assets and liabilities, offset by balance sheet hedges, we estimate that a 10% adverse change in exchange rates versus the U.S. dollar would result in losses of approximately $3 million as of February 28, 2013 and $8 million as of August 30, 2012. To hedge the exposure of changes in cash flows from changes in currency exchange rates for certain capital expenditures and forecasted operating cash flows, we utilize currency forward contracts that generally mature within 12 months and currency options that generally mature from 12 to 18 months.

In connection with the Sponsor Agreement and Rexchip Share Purchase Agreement, we may be required to make aggregate payments of 200 billion yen and approximately 10 billion New Taiwan dollars. Of the aggregate amount, 60 billion yen and approximately 10 billion New Taiwan dollars will be due at the closing of the transactions and the remaining 140 billion yen amounts will be made by the Elpida Companies in annual installments from 2014 through 2019. (See "Item 1 – Financial Statements – Notes to Consolidated Financial Statements – Proposed Acquisition of Elpida Memory, Inc.") These payments are contingent upon the closing of the transaction and are therefore not recorded on our balance sheet as of February 28, 2013. Changes in the exchange rate between the U.S. dollar and the yen and the New Taiwan dollar could have a significant impact on our financial statements if the transactions are consummated.

To mitigate the risk that increases in exchange rates have on our planned yen payments under the Sponsor Agreement, we entered into currency options that settled on March 26, 2013. As of February 28, 2013, our cumulative loss on the hedge was $168 million. In the third quarter of 2013, we recorded additional losses of $23 million through its settlement on March 26, 2013. We paid $191 million on settlement.

On March 26, 2013, we executed a series of separate currency exchange transactions to hedge our exposure to the yen-denominated acquisition payments pursuant to which we entered into below market forward contracts to buy 80 billion yen and purchased put options to sell 80 billion yen. These forward contracts and put options expire on September 25, 2013. Upon expiration on September 25, 2013, if the yen per U.S. dollar exchange rate were 94.24 or higher, the maximum net loss of these yen currency forward contracts and put options would be $30 million. If the yen per U.S. dollar exchange rate were below 91.00 at closing, these yen currency forward contracts and put options would result in a gain.

The options and forwards used to hedge our currency exposures under the Sponsor Agreement did not qualify for hedge accounting treatment and are marked-to-market at the end of each reporting period and realized and unrealized gains and losses are included in other non-operating (income) expense. (See "Item 1 – Financial Statements – Notes to Consolidated Financial Statements – Proposed Acquisition of Elpida Memory, Inc.")

## ITEM 4. CONTROLS AND PROCEDURES

An evaluation was carried out under the supervision and with the participation of our management, including our principal executive officer and principal financial officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) and 15d-15(e) under the Securities Exchange Act of 1934) as of the end of the period covered by this report. Based upon that evaluation, the principal executive officer and principal financial officer concluded that those disclosure controls and procedures were effective to ensure that information required to be disclosed by us in the reports that we file or submit under the Exchange Act are recorded, processed, summarized and reported, within the time periods specified in the Commission's rules and forms and that such information is accumulated and communicated to our management, including the principal executive officer and principal financial officer, to allow timely decision regarding disclosure.

During the quarterly period covered by this report, there were no changes in our internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

# PART II. OTHER INFORMATION

## ITEM 1. LEGAL PROCEEDINGS

### Patent Matters

On August 28, 2000, we filed a complaint against Rambus, Inc. ("Rambus") in the U.S. District Court for the District of Delaware seeking declaratory and injunctive relief. Among other things, our complaint (as amended) alleges violation of federal antitrust laws, breach of contract, fraud, deceptive trade practices, and negligent misrepresentation. The complaint also seeks a declaratory judgment (1) that we did not infringe on certain of Rambus' patents or that such patents are invalid and/or are unenforceable, (2) that we have an implied license to those patents, and (3) that Rambus is estopped from enforcing those patents against us. On February 15, 2001, Rambus filed an answer and counterclaim in Delaware denying that we are entitled to relief, alleging infringement of the eight Rambus patents (later amended to add four additional patents) named in our declaratory judgment claim, and seeking monetary damages and injunctive relief. In the Delaware action, we subsequently added claims and defenses based on Rambus' alleged spoliation of evidence and litigation misconduct. The spoliation and litigation misconduct claims and defenses were heard in a bench trial before Judge Robinson in October 2007. On January 9, 2009, Judge Robinson entered an opinion in our favor holding that Rambus had engaged in spoliation and that the twelve Rambus patents in the suit were unenforceable against us. Rambus subsequently appealed the decision to the U.S. Court of Appeals for the Federal Circuit. On May 13, 2011, the Federal Circuit affirmed Judge Robinson's finding of spoliation, but vacated the dismissal sanction and remanded the case to the Delaware District Court for further analysis of the appropriate remedy. On January 2, 2013, Judge Robinson entered a new opinion in our favor holding that Rambus had engaged in spoliation, that Rambus' spoliation was done in bad faith, that the spoliation prejudiced us, and that the appropriate sanction was to declare the twelve Rambus patents in the suit unenforceable against us. On March 27, 2013, Rambus filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit. On January 13, 2006, Rambus filed a lawsuit against us in the U.S. District Court for the Northern District of California. Rambus alleges that certain of our DDR2, DDR3, RLDRAM, and RLDRAM II products infringe as many as fourteen Rambus patents and seeks monetary damages, treble damages and injunctive relief. The accused products account for a significant portion of our net sales. On June 2, 2006, we filed an answer and counterclaim against Rambus alleging, among other things, antitrust and fraud claims. The Northern District of California Court stayed the trial of the patent phase of the Northern District of California case upon appeal of the Delaware spoliation issue to the Federal Circuit.

A number of other suits involving Rambus are currently pending in Europe alleging that certain of our SDRAM and DDR SDRAM products infringe various of Rambus' country counterparts to its European patent 525 068, including: on September 1, 2000, Rambus filed suit against Micron Semiconductor (Deutschland) GmbH in the District Court of Mannheim, Germany; on September 22, 2000, Rambus filed a complaint against us and Reptronic (a distributor of our products) in the Court of First Instance of Paris, France; on September 29, 2000, we filed suit against Rambus in the Civil Court of Milan, Italy, alleging invalidity and non-infringement. In addition, on December 29, 2000, we filed suit against Rambus in the Civil Court of Avezzano, Italy, alleging invalidity and non-infringement of the Italian counterpart to European patent 1 004 956. Additionally, on August 14, 2001, Rambus filed suit against Micron Semiconductor (Deutschland) GmbH in the District Court of Mannheim, Germany alleging that certain of our DDR SDRAM products infringe Rambus' country counterparts to its European patent 1 022 642. In the European suits against us, Rambus is seeking monetary damages and injunctive relief. Subsequent to the filing of the various European suits, the European Patent Office (the "EPO") declared Rambus' 525 068, 1 022 642, and 1 004 956 European patents invalid and revoked the patents. The declaration of invalidity with respect to the '068 and '642 patents was upheld on appeal. The original claims of the '956 patent also were declared invalid on appeal, but the EPO ultimately granted a Rambus request to amend the claims by adding a number of limitations.

On September 1, 2011, HSM Portfolio LLC and Technology Properties Limited LLC filed a patent infringement action in the U.S. District Court for the District of Delaware against us and seventeen other defendants. The complaint alleges that certain of our DRAM and image sensor products infringe two U.S. patents and seeks injunctive relief, damages, attorneys' fees, and costs.

On September 9, 2011, Advanced Data Access LLC filed a patent infringement action in the U.S. District Court for the Eastern District of Texas (Tyler) against us and seven other defendants. On November 16, 2011, Advanced Data Access filed an amended complaint. The amended complaint alleged that certain of our DRAM products infringed two U.S. patents and sought injunctive relief, damages, attorneys' fees, and costs. On March 20, 2013, we executed a settlement agreement resolving this litigation. The settlement amount did not have a material effect on our business, results of operations or financial condition.

On September 14, 2011, Smart Memory Solutions LLC filed a patent infringement action in the U.S. District Court for the District of Delaware against us and Winbond Electronics Corporation of America. The complaint alleged that certain of our NOR Flash products infringed a single U.S. patent and sought injunctive relief, damages, attorneys' fees, and costs. On March 20, 2013, we executed a settlement agreement resolving this litigation. The settlement amount did not have a material effect on our business, results of operations or financial condition.

On December 5, 2011, the Board of Trustees for the University of Illinois filed a patent infringement action against us in the U.S. District Court for the Central District of Illinois. The complaint alleges that unspecified semiconductor products of ours infringe three U.S. patents and seeks injunctive relief, damages, attorneys' fees, and costs. We have filed three petitions for *inter-partes* review by the Patent and Trademark Office, challenging the validity of each of the patents in suit. The District Court has stayed the litigation pending the outcome of the *inter-partes* review by the Patent Office.

On March 26, 2012, Semiconductor Technologies, LLC filed a patent infringement action in the U.S. District Court for the Eastern District of Texas (Marshall) against us. The complaint alleged that certain of our DRAM products infringed five U.S. patents and sought injunctive relief, damages, attorneys' fees, and costs. On March 20, 2013, we executed a settlement agreement resolving this litigation. The settlement amount did not have a material effect on our business, results of operations or financial condition.

On April 27, 2012, Semcon Tech, LLC filed a patent infringement action against us in the U.S. District Court for the District of Delaware. The complaint alleges that our use of various chemical mechanical planarization systems purchased from Applied Materials and others infringes a single U.S. patent and seeks injunctive relief, damages, attorneys' fees, and costs.

We are unable to predict the outcome of these suits, except as noted in the discussion of the Advanced Data Access LLC, Smart Memory Solutions LLC and Semiconductor Technologies, LLC matters above. A court determination that our products or manufacturing processes infringe the product or process intellectual property rights of others could result in significant liability and/or require us to make material changes to our products and/or manufacturing processes. Any of the foregoing results could have a material adverse effect on our business, results of operations or financial condition.

## Antitrust Matters

On May 5, 2004, Rambus filed a complaint in the Superior Court of the State of California (San Francisco County) against us and other DRAM suppliers which alleged that the defendants harmed Rambus by engaging in concerted and unlawful efforts affecting Rambus DRAM by eliminating competition and stifling innovation in the market for computer memory technology and computer memory chips. Rambus' complaint alleged various causes of action under California state law including, among other things, a conspiracy to restrict output and fix prices, a conspiracy to monopolize, intentional interference with prospective economic advantage, and unfair competition. Rambus sought a judgment for damages of approximately $3.9 billion, joint and several liability, trebling of damages awarded, punitive damages, a permanent injunction enjoining the defendants from the conduct alleged in the complaint, interest, and attorneys' fees and costs. Trial began on June 20, 2011, and the case went to the jury on September 21, 2011. On November 16, 2011, the jury found for us on all claims. On April 2, 2012, Rambus filed a notice of appeal to the California 1st District Court of Appeal.

A number of purported class action price-fixing lawsuits have been filed against us and other DRAM suppliers. Four cases have been filed in the U.S. District Court for the Northern District of California asserting claims on behalf of a purported class of individuals and entities that indirectly purchased DRAM and/or products containing DRAM from various DRAM suppliers during the time period from April 1, 1999 through at least June 30, 2002. The complaints allege a conspiracy to increase DRAM prices in violation of federal and state antitrust laws and state unfair competition law, and/or unjust enrichment relating to the sale and pricing of DRAM products. The complaints seek joint and several damages, trebled, monetary damages, restitution, costs, interest and attorneys' fees. In addition, at least sixty-four cases have been filed in various state courts asserting claims on behalf of a purported class of indirect purchasers of DRAM. In July 2006, the Attorneys General for approximately forty U.S. states and territories filed suit in the U.S. District Court for the Northern District of California. The complaints allege, among other things, violations of the Sherman Act, Cartwright Act, and certain other states' consumer protection and antitrust laws and seek joint and several damages, trebled, as well as injunctive and other relief. On October 3, 2008, the California Attorney General filed a similar lawsuit in California Superior Court, purportedly on behalf of local California government entities, alleging, among other things, violations of the Cartwright Act and state unfair competition law. On June 23, 2010, we executed a settlement agreement resolving these purported class-action indirect purchaser cases and the pending cases of the Attorneys General relating to alleged DRAM price-fixing in the United States. Subject to certain conditions, including final court approval of the class settlements, we agreed to pay approximately $67 million in aggregate in three equal installments over a two-year period. We had paid the full amount into an escrow account by the end of the first quarter of 2013 in accordance with the settlement agreement.

Three putative class action lawsuits alleging price-fixing of DRAM products also have been filed against us in Quebec, Ontario, and British Columbia, Canada, on behalf of direct and indirect purchasers, asserting violations of the Canadian Competition Act and other common law claims (collectively the "Canadian Cases"). The claims were initiated between December 2004 (British Columbia) and June 2006 (Quebec). The plaintiffs seek monetary damages, restitution, costs, and attorneys' fees. The substantive allegations in these cases are similar to those asserted in the DRAM antitrust cases filed in the United States. Plaintiffs' motion for class certification was denied in the British Columbia and Quebec cases in May and June 2008, respectively. Plaintiffs subsequently filed an appeal of each of those decisions. On November 12, 2009, the British Columbia Court of Appeal reversed, and on November 16, 2011, the Quebec Court of Appeal also reversed the denial of class certification and remanded the cases for further proceedings. On October 16, 2012, we entered into a settlement agreement resolving these three putative class action cases subject to certain conditions including final court approval of the settlement. The settlement amount did not have a material effect on our business, results of operations or financial condition.

On June 21, 2010, the Brazil Secretariat of Economic Law of the Ministry of Justice ("SDE") announced that it had initiated an investigation relating to alleged anticompetitive activities within the DRAM industry. The SDE's Notice of Investigation names various DRAM manufacturers and certain executives, including us, and focuses on the period from July 1998 to June 2002.

We are unable to predict the outcome of these matters, except as noted in the U.S. indirect purchaser cases and the Canadian Cases above. The final resolution of these alleged violations of antitrust laws could result in significant liability and could have a material adverse effect on our business, results of operations or financial condition.

## Commercial Matters

On January 20, 2011, Dr. Michael Jaffé, administrator for Qimonda AG ("Qimonda") insolvency proceedings, filed suit against us and Micron Semiconductor B.V., our Netherlands subsidiary, in the District Court of Munich, Civil Chamber. The complaint seeks to void under Section 133 of the German Insolvency Act a share purchase agreement between us and Qimonda signed in fall 2008 pursuant to which we purchased all of Qimonda's shares of Inotera Memories, Inc. and seeks an order requiring us to retransfer the Inotera shares purchased from Qimonda to the Qimonda estate. The complaint also seeks to terminate under Sections 103 or 133 of the German Insolvency Code a patent cross license between us and Qimonda entered into at the same time as the share purchase agreement. A three-judge panel will render a decision after a series of hearings with pleadings, arguments and witnesses. Hearings were held on September 25, 2012 and February 5, 2013. Additional hearings are scheduled for June 11, 2013 and July 2, 2013. We are unable to predict the outcome of this lawsuit and therefore cannot estimate the range of possible loss. The final resolution of this lawsuit could result in the loss of the Inotera shares or equivalent monetary damages and the termination of the patent cross license, which could have a material adverse effect on our business, results of operation or financial condition. As of February 28, 2013, the Inotera shares purchased from Qimonda had a net carrying value of $121 million.

(See "Item 1A. Risk Factors.")

## ITEM 1A. RISK FACTORS

In addition to the factors discussed elsewhere in this Form 10-Q, the following are important factors which could cause actual results or events to differ materially from those contained in any forward-looking statements made by or on behalf of us.

**We have experienced dramatic declines in average selling prices for our semiconductor memory products which have adversely affected our business.**

If average selling prices for our memory products decrease faster than we can decrease per gigabit costs, our business, results of operations or financial condition could be materially adversely affected. We have experienced significant decreases in our average selling prices per gigabit in recent years as noted in the table below and may continue to experience such decreases in the future. In some prior periods, average selling prices for our memory products have been below our manufacturing costs and we may experience such circumstances in the future.

| | DRAM | Trade NAND Flash* |
|---|---|---|
| | (percentage change in average selling prices) | |
| 2012 from 2011 | (45)% | (55)% |
| 2011 from 2010 | (39)% | (12)% |
| 2010 from 2009 | 28 % | 26 % |
| 2009 from 2008 | (52)% | (52)% |
| 2008 from 2007 | (51)% | (68)% |

** Trade NAND Flash excludes sales to Intel from IM Flash.*

**We may be unable to reduce our per gigabit manufacturing costs at the rate average selling prices decline.**

Our gross margins are dependent upon continuing decreases in per gigabit manufacturing costs achieved through improvements in our manufacturing processes, including reducing the die size of our existing products. In future periods, we may be unable to reduce our per gigabit manufacturing costs at sufficient levels to improve or maintain gross margins. Factors that may limit our ability to reduce costs include, but are not limited to, strategic product diversification decisions affecting product mix, the increasing complexity of manufacturing processes, difficulty in transitioning to smaller line-width process technologies, technological barriers and changes in process technologies or products that may require relatively larger die sizes. Per gigabit manufacturing costs may also be affected by the relatively smaller production quantities and shorter product lifecycles of certain specialty memory products.

**The semiconductor memory industry is highly competitive.**

We face intense competition in the semiconductor memory market from a number of companies, including Elpida Memory, Inc.; Samsung Electronics Co., Ltd.; SanDisk Corporation; SK Hynix Inc.; Spansion Inc. and Toshiba Corporation. Some of our competitors are large corporations or conglomerates that may have greater resources to withstand downturns in the semiconductor markets in which we compete, invest in technology and capitalize on growth opportunities. Our competitors seek to increase silicon capacity, improve yields, reduce die size and minimize mask levels in their product designs. Transitions to smaller line-width process technologies and product and process improvements have resulted in significant increases in the worldwide supply of semiconductor memory. Increases in worldwide supply of semiconductor memory also result from semiconductor memory fab capacity expansions, either by way of new facilities, increased capacity utilization or reallocation of other semiconductor production to semiconductor memory production. Our competitors may increase capital expenditures resulting in future increases in worldwide supply. Increases in worldwide supply of semiconductor memory, if not accompanied with commensurate increases in demand, would lead to further declines in average selling prices for our products and would materially adversely affect our business, results of operations or financial condition.

**Our pending acquisitions of Elpida and Rexchip involve numerous risks.**

On July 2, 2012, we entered into an "Agreement on Support for Reorganization Companies" (the "Sponsor Agreement") with the trustees of Elpida Memory, Inc. ("Elpida") and its subsidiary, Akita Elpida Memory, Inc. (together with Elpida, the "Elpida Companies"), which provides for, among other things, our acquisition of Elpida and our support for the plans of reorganization of the Elpida Companies in connection with their corporate reorganization proceedings in Japan. The Elpida Companies filed petitions for commencement of corporate reorganization proceedings with the Tokyo District Court (the "Japan Court") under the Corporate Reorganization Act of Japan on February 27, 2012 (the "Japan Proceeding"). On March 23, 2012, the Japan Court issued an order to commence the Japan Proceeding. Elpida filed a Verified Petition for Recognition and Chapter 15 Relief (the "U.S. Proceeding") in the United States Bankruptcy Court for the District of Delaware (the "U.S. Court") on March 19, 2012 and, on April 24, 2012, the U.S. Court entered an order that, among other things, recognized the Japan Proceeding as a foreign main proceeding pursuant to 11 U.S.C. § 1517(b).

Under the Sponsor Agreement, we committed to support plans of reorganization for the Elpida Companies that would provide for payments by the Elpida Companies to their secured and unsecured creditors in an aggregate amount of 200 billion yen (or the equivalent of approximately $2.17 billion), less certain expenses of the reorganization proceedings and certain other items.

The Sponsor Agreement provides that we will invest 60 billion yen (or the equivalent of approximately $650 million) in cash in Elpida at the closing in exchange for 100% ownership of Elpida's equity. As a condition to the execution of the Sponsor Agreement, we deposited 1.8 billion yen (or the equivalent of approximately $20 million) into an escrow account in July 2012, which will be applied towards our purchase price for the Elpida shares at closing. The Elpida Companies will use the proceeds of our investment to fund an initial installment payment to their creditors of 60 billion yen, which amount is subject to reduction for certain items specified in the Sponsor Agreement. The initial installment payment will be made within three months following the closing of our acquisition of Elpida. The remaining 140 billion yen (or the equivalent of approximately $1.52 billion) of installment payments payable to the Elpida Companies' creditors will be made by the Elpida Companies in six annual installments payable at the end of each calendar year beginning in the calendar year after the first installment payment is made. If the resolution of certain unfixed claims under the proposed plans of reorganization, primarily comprised of outstanding litigation claims, would result in payments in respect of those claims in excess of amounts reserved under the proposed plans of reorganization to satisfy such claims, there is a possibility that the Elpida Companies would be required to pay more than 200 billion yen to their pre-petition creditors under the plans of reorganization. In addition, if these unfixed claims are resolved pursuant to settlement arrangements or other post-petition agreements, a substantial portion of the amounts payable with respect to the claims may have to be funded by the Elpida Companies outside of the installment payments provided for by the plans of reorganization. We, or one of our subsidiaries, are committed to enter into a supply agreement with Elpida following the closing, which will provide for our purchase on a cost-plus basis of all product produced by Elpida. Cash flows from such supply agreement are expected to be sufficient to satisfy the required installment payments under the plans of reorganization. Although certain key parameters of the supply agreement have been agreed to with Elpida, the detailed terms have not been completed, and the final terms will be subject to Japan Court approval.

On July 2, 2012, we also entered into a share purchase agreement with Powerchip Technology Corporation ("Powerchip") and certain of its affiliates (the "Rexchip Share Purchase Agreement"), under which we will purchase approximately 714 million shares of the common stock of Rexchip, a manufacturing joint venture formed by Elpida and Powerchip, for approximately 10 billion New Taiwan dollars (or the equivalent of approximately $338 million).

If the transactions contemplated by these two agreements are completed, we will own 100% of Elpida and, directly or indirectly through Elpida, 89% of Rexchip.

The consummation of the Sponsor Agreement remains subject to completion or waiver of certain conditions, including:

i. the finalization of the order of the Japan Court approving the plans of reorganization of the Elpida Companies, which order with respect to the Elpida plan of reorganization has been appealed by certain creditors of Elpida. On February 26, 2013, the Elpida Companies' creditors voted and approved the reorganization plans and on February 28, 2013, the Japan Court issued an order approving the plans of reorganization. On March 29, 2013, certain creditors of Elpida filed appeals with the Tokyo High Court of the Japan Court's order approving Elpida's plan of reorganization. Timing of the Tokyo High Court appeal process depends on a number of factors outside of our control and is impossible to predict with accuracy;

ii. the granting of a recognition order by the U.S. Court with respect to the Japan Court's approval of the Elpida plan of reorganization or the completion or implementation of alternative actions providing substantially equivalent benefits; and

iii. the closing of the purchase of the Rexchip shares from the Powerchip Group under the Rexchip Share Purchase Agreement described below.

There can be no assurance that the various conditions will be satisfied or that the Elpida acquisition will ultimately be consummated on the terms and conditions set forth in the Sponsor Agreement. Various creditors are challenging Elpida's proposed plan of reorganization and related requests for relief, both in the Japan Proceedings and the U.S. Proceedings. If the requisite court approvals and decisions are not obtained or the closing conditions are not satisfied or waived, we will not be able to close the acquisitions. We believe the Japan Court's approval of Elpida's reorganization plan will be upheld by the Tokyo High Court, that the other requirements for closing will be achieved and that we will close the acquisitions. However, we cannot be certain what effect, if any, challenges by the creditors will have on the timing of the closing.

In addition to the acquisition risks described elsewhere, these acquisitions are expected to involve the following significant risks:

- we may incur losses in connection with our financial support, including outstanding guarantees and financing, of the Elpida Companies' working capital financing and eligible capital expenditures, which losses may arise even if the transactions do not close;
- we may be unable to maintain customers, successfully execute our integration strategies, or achieve planned synergies;
- we may be unable to accurately forecast the anticipated financial results of the combined business;
- our consolidated financial condition may be adversely impacted by the increased leverage resulting from the transactions;
- increased exposure to the DRAM market, which experienced significant declines in pricing during the first quarter of 2013 as well as 2012 and 2011;
- deterioration of Elpida's and Rexchip's operations and customer base during the period between signing and closing;
- increased exposure to operating costs denominated in yen and New Taiwan dollar;
- integration issues with Elpida's and Rexchip's primary manufacturing operations in Japan and Taiwan;
- integration issues of our product and process technology with Elpida and Rexchip;
- integration of business systems and processes; and
- an overlap in customers.

Our pending acquisitions of Elpida and Rexchip are inherently risky, may not be successful and may materially adversely affect our business, results of operations or financial condition.

**The operations of the Elpida Companies will be subject to continued oversight by the Japan Court during the pendency of the corporate reorganization proceedings.**

If we are able to complete the Elpida acquisition, the operation of the businesses of the Elpida Companies will be subject to ongoing oversight by the Japan Court and the trustees during the pendency of the corporate reorganization proceedings. This oversight may continue until the final creditor payment is made under the Elpida Companies' plans of reorganization, which is scheduled to occur in December 2019, but may occur on a later date to the extent any claims of creditors remain unfixed on the final scheduled installment payment date. Although we may be able to petition the court to terminate the corporate reorganization proceedings once two-thirds of all payments under the plans of reorganization are made, there can be no assurance that the Japan Court will grant any such petition.

During the pendency of the Japan Proceeding, the Elpida Companies will provide periodic financial reports to the Japan Court and may be required to obtain the consent of the Japan Court prior to taking a number of significant actions relating to their businesses, including transferring or disposing of, or acquiring, assets outside the ordinary course of business, incurring or guaranteeing indebtedness, settling disputes or entering into or terminating certain agreements. The consent of the legal trustee may also be required for matters that would likely have a material impact on the operations or assets of the Elpida Companies and their subsidiaries or for transfers of material assets, to the extent the matters or transfers would reasonably be expected to materially and adversely affect execution of the plans of reorganization of the Elpida Companies.

The purpose of the ongoing oversight of the Japan Court is to help ensure that the Elpida Companies meet their installment payment obligations under the plans of reorganization. Although we are planning to request that the Japan Court limit these consent requirements following the closing, we cannot guarantee that we will be successful in narrowing the scope of these consent requirements or that the Japan Court will not impose further requirements on the Elpida Companies, particularly if the Japan Court perceives any risk in the ability of the Elpida Companies to satisfy their obligations under the plans of reorganization. Accordingly, during the pendency of the Japan Proceeding, our ability to efficiently integrate the Elpida Companies as part of our global operations could be adversely affected if the Japan Court or the legal trustee is unwilling to consent to various actions that we may wish to take with respect to the Elpida Companies. In addition, as a result of the U.S. Proceeding, certain actions that we may wish to take with respect to the U.S. assets of the Elpida Companies (primarily U.S. patents) following the closing (including any transfers or licenses of U.S. intellectual property assets in connection with the implementation of the cost-plus supply arrangement described above) may require approval from the U.S. Court. It is a condition to the closing of Micron's acquisition of Elpida that the U.S. Court enters an order that recognizes the order of the Japan Court approving the plans of reorganization and authorizes their implementation with respect to assets that exist and claims that can be asserted in the United States or that alternative actions providing substantially equivalent benefits are completed or implemented. If the U.S. Court does not enter such an order or such alternative actions are not completed or implemented and we waive this condition, the U.S. assets of Elpida may remain subject to continued U.S. Court jurisdiction and actions that we may wish to take with respect to the U.S. assets of Elpida may remain subject to U.S. Court oversight.

**Our pending acquisitions of Elpida and Rexchip expose us to significant risks from changes in currency exchange rates.**

Under the Sponsor Agreement, we committed to support plans of reorganization for Elpida that would provide for payments to the secured and unsecured creditors of Elpida in an aggregate amount of 200 billion yen. Also, under the share purchase agreement with Powerchip, we agreed to pay approximately 10 billion New Taiwan dollars to purchase approximately 714 million shares of Rexchip common stock. The U.S. dollar amount of these payment obligations could increase if these currencies strengthen against the U.S. dollar. Additionally, a significant portion of Elpida's operating costs are paid in Yen and New Taiwan dollars so our operating results subsequent to the acquisition could also be adversely impacted if these currencies strengthen against the U.S. dollar.

In connection with the Elpida Sponsor Agreement, in July of 2012, we entered into a series of currency option contracts to hedge our exposure to the yen-denominated acquisition payments under the agreements. In the second quarter and first six months of 2013, we recognized losses of $114 million and $176 million on these currency options. In the third quarter of 2013, we settled these options and made a payment of $191 million. An additional loss of $23 million was recognized on these currency hedges in the third quarter of 2013.

On March 26, 2012, we entered into a series of currency forward and option contracts to hedge our exposure to the yen-denominated acquisition payments pursuant to which we purchased forward contracts to buy 80 billion yen and purchased put options to sell 80 billion yen. These forward contracts and put options, which expire on September 25, 2013, mitigate the risk of a strengthening yen for certain of our yen-denominated payments under the Sponsor Agreement while preserving some ability for us to benefit if the value of the yen weakens relative to the U.S. dollar. At the closing on September 25, 2013, if the yen per U.S. dollar exchange rate were 94.24 or higher, then the maximum net loss of these yen currency forward contracts and put options would be $30 million. If the yen per U.S. dollar exchange rate were below 91.00 at closing, then these yen currency forward contracts and put options would result in a gain.

**We may make future acquisitions and/or alliances, which involve numerous risks.**

Acquisitions and the formation or operation of alliances, such as joint ventures and other partnering arrangements, involve numerous risks including the following:

- integrating the operations, technologies and products of acquired or newly formed entities into our operations;
- increasing capital expenditures to upgrade and maintain facilities;
- increased debt levels;
- the assumption of unknown or underestimated liabilities;
- the use of cash to finance a transaction, which may reduce the availability of cash to fund working capital, capital expenditures, research and development expenditures and other business activities;
- diverting management's attention from normal daily operations;
- managing larger or more complex operations and facilities and employees in separate and diverse geographic areas;
- hiring and retaining key employees;
- requirements imposed by governmental authorities in connection with the regulatory review of a transaction, which may include, among other things, divestitures or restrictions on the conduct of our business or the acquired business;

- inability to realize synergies or other expected benefits;
- failure to maintain customer, vendor and other relationships;
- inadequacy or ineffectiveness of an acquired company's internal financial controls, disclosure controls and procedures, and/or environmental, health and safety, anti-corruption, human resource, or other policies or practices; and
- impairment of acquired intangible assets and goodwill as a result of changing business conditions, technological advancements or worse-than-expected performance of the acquired business.

In recent years, supply of memory products has significantly exceeded customer demand resulting in significant declines in average selling prices for DRAM, NAND Flash and NOR Flash products. Resulting operating losses have led to the deterioration in the financial condition of a number of industry participants, including the liquidation of Qimonda AG and the recent bankruptcy filing by Elpida Memory, Inc. These types of proceedings often lead to confidential court-directed processes involving the sale of related businesses or assets. We believe the global memory industry is experiencing a period of consolidation as a result of these market conditions and other factors, and we have engaged, and expect to continue to engage, in discussions regarding potential acquisitions and similar opportunities arising out of these industry conditions, such as our pending acquisition of Elpida. To the extent we are successful in completing any such transactions, we could be subject to some or all of the risks described above, including the risks pertaining to funding, assumption of liabilities, integration challenges and increases in debt that may accompany such transactions. Acquisitions of, or alliances with, high-technology companies are inherently risky and may not be successful and may materially adversely affect our business, results of operations or financial condition.

**Debt obligations could adversely affect our financial condition.**

We are engaged in a capital intensive business subject to significant changes in supply and demand and product pricing and recent periods of consolidation, any of which could result in our incurrence or assumption of indebtedness. In recent periods, our debt levels have increased and are expected to continue to increase through 2013. As of February 28, 2013, we had $3.65 billion of debt, including $485 million principal amount of convertible senior notes due 2014. As of February 28, 2013, we had existing credit facilities that allowed us to draw up to an additional $255 million, subject to certain customary conditions.

In connection with the Sponsor Agreement, we are obligated to provide financial support, subject to certain conditions, which may include guarantees of Elpida's financing of working capital and up to $694 million of eligible capital expenditures incurred through June 30, 2014. Failure to close the transaction would not relieve us of our obligations under any guarantees to third party financing sources entered into in connection with any such financing arrangements. As of February 28, 2013, we had provided payment guarantees related to financing of capital expenditures of 29 million euros (or $38 million) and 6 billion yen (or $65 million), and provided a payment guarantee related to an extension of Elpida's existing working capital credit facility, which provides for aggregate borrowing in the amount of up to 10 billion yen (or $108 million), with an outstanding borrowing of 8 billion yen ($87 million). In addition, if we are able to complete the Elpida acquisition, we will fund 60 billion yen (or $650 million) through a cash payment to Elpida at the closing, in exchange for 100% ownership of Elpida's equity. The remaining 140 billion yen (or $1.52 billion) of payments will be made by the Elpida Companies in six annual installments payable at the end of each calendar year beginning in 2014, with payments of 20 billion yen (or $217 million) in each of 2014 through 2017, and payments of 30 billion yen (or $325 million) in each of 2018 and 2019. We may need to incur additional debt in the future.

Our debt and our guarantee obligations could adversely impact us. For example, these obligations could:

- require us to use a large portion of our cash flow to pay principal and interest on debt, which will reduce the amount of cash flow available to fund working capital, capital expenditures, acquisitions, research and development expenditures and other business activities;
- limit our future ability to raise funds for capital expenditures, strategic acquisitions or business opportunities, research and development and other general corporate requirements;
- contribute to a future downgrade of our credit rating, which could increase future borrowing costs; and
- increase our vulnerability to adverse economic and semiconductor memory industry conditions.

Our ability to meet our payment obligations under our debt instruments depends on our ability to generate significant cash flow in the future. This, to some extent, is subject to general economic, financial, competitive, legislative and regulatory factors as well as other factors that are beyond our control. There can be no assurance that our business will generate cash flow from operations, or that additional capital will be available to us, in an amount sufficient to enable us to meet our debt payment obligations and to fund other liquidity needs. If we are unable to generate sufficient cash flow to service our debt obligations, we may need to refinance or restructure our debt, sell assets, reduce or delay capital investments, or seek to raise additional capital. If we were unable to implement one or more of these alternatives, we may be unable to meet our debt payment obligations.

**We may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations, make scheduled debt payments and make adequate capital investments.**

Our cash flows from operations depend primarily on the volume of semiconductor memory sold, average selling prices and per unit manufacturing costs. To develop new product and process technologies, support future growth, achieve operating efficiencies and maintain product quality, we must make significant capital investments in manufacturing technology, capital equipment, facilities, R&D and product and process technology. We estimate that capital spending for 2013 will be approximately $1.6 billion to $1.9 billion. In addition, if we are able to complete the Elpida acquisition we believe that capital spending following the closing will be higher than our historical levels as a result of the investments needed to integrate the companies' manufacturing operations and to support the increased capacity resulting from the Elpida transaction. As of February 28, 2013, we had cash and equivalents of $2,061 million and short-term investments of $167 million. Cash and investments included $92 million held by IM Flash Technologies, LLC ("IMFT"), which is generally not available to finance our other operations. If we are able to close the Elpida transaction, cash held by Elpida may be available to fund a portion of the capital spending. In the past we have utilized external sources of financing when needed. As a result of our current debt levels, expected debt amortization and general economic conditions, it may be difficult for us to obtain financing on terms acceptable to us. There can be no assurance that we will be able to generate sufficient cash flows, access cash held by Elpida, access capital markets or find other sources of financing to fund our operations, make debt amortization payments and make adequate capital investments to remain competitive in terms of technology development and cost efficiency. Our inability to do the foregoing could have a material adverse effect on our business and results of operations.

**The financial crisis and overall downturn in the worldwide economy may harm our business.**

The financial crisis and the overall downturn in the worldwide economy have had an adverse effect on our business. A continuation or further deterioration of depressed economic conditions could have an even greater adverse effect on our business. Adverse economic conditions affect demand for devices that incorporate our products, such as personal computers, networking products and mobile devices. Reduced demand for these products could result in significant decreases in our average selling prices and product sales. A deterioration of current conditions in worldwide credit markets would limit our ability to obtain external financing to fund our operations and capital expenditures. In addition, we may experience losses on our holdings of cash and investments due to failures of financial institutions and other parties. Difficult economic conditions may also result in a higher rate of loss on our accounts receivables due to credit defaults. As a result, our business, results of operations or financial condition could be materially adversely affected.

**Inotera's financial situation may adversely impact the value of our interest and our supply agreement.**

Due to significant market declines in the selling prices of DRAM, Inotera incurred net losses of $541 million for its fiscal year ended December 31, 2012. Also, Inotera's current liabilities exceeded its current assets by $1.76 billion as of December 31, 2012, which exposes Inotera to liquidity risk. As of December 31, 2012, Inotera was not in compliance with certain loan covenants, and had not been in compliance for the past several years. Inotera has requested a waiver from complying with the December 31, 2012 financial covenants and Inotera's creditors have until May 3, 2013 to respond. Inotera's management has developed plans to improve its liquidity, but there can be no assurance that Inotera will be successful in obtaining a waiver from complying with its financial covenants as of December 31, 2012 or improving its liquidity, which may result in its lenders requiring repayment of such loans during the next year. If Inotera is unable to adequately improve its liquidity, we may have to impair our investment in Inotera.

On January 17, 2013, we entered into agreements with Nanya Technology Corporation ("Nanya") to amend the joint venture relationship involving Inotera. The amendments include a new supply agreement (the "Inotera Supply Agreement") between us and Inotera under which we will purchase substantially all of Inotera's output at a purchase price based on a discount from actual market prices for comparable components. The Inotera Supply Agreement was retroactively effective beginning on January 1, 2013. Effective through December 31, 2012, we had rights and obligations to purchase 50% of Inotera's wafer production capacity based on a margin-sharing formula among Nanya, Inotera and us. In the second quarter of 2013, we purchased $200 million of DRAM products from Inotera and our supply from Inotera accounted for 55% of our aggregate DRAM gigabit production. If our supply of DRAM from Inotera is impacted, our business, results of operations or financial condition could be materially adversely affected.

**Our Inotera Supply Agreement involves numerous risks.**

Our Inotera Supply Agreement involves numerous risks including the following:

- we have experienced difficulties and delays in ramping production at Inotera on our technology and may continue to experience difficulties and delays in the future;
- we have experienced and may experience in the future difficulties in transferring technology to Inotera;
- difficulties in obtaining high yield and throughput due to differences in Inotera's manufacturing processes and equipment from our other fabrication facilities; and
- uncertainties around the timing and amount of wafer supply we will receive under the Inotera Supply Agreement.

**Our future success depends on our ability to develop and produce competitive new memory technologies.**

Our key semiconductor memory technologies of DRAM, NAND Flash and NOR Flash face technological barriers to continue to meet long-term customer needs. These barriers include potential limitations on the ability to shrink products in order to reduce costs, meet higher density requirements and improve power consumption and reliability. To meet these requirements, we expect that new memory technologies will be developed by the semiconductor memory industry. Our competitors are working to develop new memory technologies that may offer performance and/or cost advantages to our existing memory technologies and render existing technologies obsolete. Accordingly, our future success may depend on our ability to develop and produce viable and competitive new memory technologies. There can be no assurance of the following:

- that we will be successful in developing competitive new semiconductor memory technologies;
- that we will be able to cost-effectively manufacture new products;
- that we will be able to successfully market these technologies; and
- that margins generated from sales of these products will allow us to recover costs of development efforts.

If our efforts to develop new semiconductor memory technologies are unsuccessful, our business, results of operations or financial condition may be adversely affected.

**The acquisition of our ownership interest in Inotera from Qimonda has been legally challenged by the administrator of the insolvency proceedings for Qimonda.**

On January 20, 2011, Dr. Michael Jaffé, administrator for Qimonda AG ("Qimonda") insolvency proceedings, filed suit against us and Micron Semiconductor B.V., our Netherlands subsidiary, in the District Court of Munich, Civil Chamber. The complaint seeks to void under Section 133 of the German Insolvency Act a share purchase agreement between us and Qimonda signed in fall 2008 pursuant to which we purchased all of Qimonda's shares of Inotera Memories, Inc. and seeks an order requiring us to retransfer the Inotera shares purchased from Qimonda to the Qimonda estate. The complaint also seeks to terminate under Sections 103 or 133 of the German Insolvency Code a patent cross license between us and Qimonda entered into at the same time as the share purchase agreement. A three-judge panel will render a decision after a series of hearings with pleadings, arguments and witnesses. Hearings were held on September 25, 2012 and February 5, 2013. Additional hearings are scheduled for June 11, 2013 and July 2, 2013. We are unable to predict the outcome of this lawsuit and therefore cannot estimate the range of possible loss. The final resolution of this lawsuit could result in the loss of the Inotera shares or equivalent monetary damages and the termination of the patent cross license, which could have a material adverse effect on our business, results of operation or financial condition. As of February 28, 2013, the Inotera shares purchased from Qimonda had a net carrying value of $121 million.

**Our joint ventures and strategic relationships involve numerous risks.**

We have entered into strategic relationships to manufacture products and develop new manufacturing process technologies and products. These relationships include our IMFT NAND Flash joint venture with Intel Corporation ("Intel"), our Inotera DRAM joint venture with Nanya, our MP Mask joint venture with Photronics and our CMOS image sensor wafer supply agreement with Aptina Imaging Corporation ("Aptina"). These joint ventures and strategic relationships are subject to various risks that could adversely affect the value of our investments and our results of operations. These risks include the following:

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

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

**An adverse outcome relating to allegations of anticompetitive conduct could materially adversely affect our business, results of operations or financial condition.**

On May 5, 2004, Rambus, Inc. ("Rambus") filed a complaint in the Superior Court of the State of California (San Francisco County) against us and other DRAM suppliers which alleged that the defendants harmed Rambus by engaging in concerted and unlawful efforts affecting Rambus DRAM by eliminating competition and stifling innovation in the market for computer memory technology and computer memory chips. Rambus' complaint alleged various causes of action under California state law including, among other things, a conspiracy to restrict output and fix prices, a conspiracy to monopolize, intentional interference with prospective economic advantage, and unfair competition. Rambus sought a judgment for damages of approximately $3.9 billion, joint and several liability, trebling of damages awarded, punitive damages, a permanent injunction enjoining the defendants from the conduct alleged in the complaint, interest, and attorneys' fees and costs. Trial began on June 20, 2011, and the case went to the jury on September 21, 2011. On November 16, 2011, the jury found for us on all claims. On April 2, 2012, Rambus filed a notice of appeal to the California 1st District Court of Appeal.

We are unable to predict the outcome of this matter. An adverse court determination of any lawsuit alleging violations of antitrust laws could result in significant liability and could have a material adverse effect on our business, results of operations or financial condition.

**An adverse determination that our products or manufacturing processes infringe the intellectual property rights of others could materially adversely affect our business, results of operations or financial condition.**

On January 13, 2006, Rambus filed a lawsuit against us in the U.S. District Court for the Northern District of California. Rambus alleges that certain of our DDR2, DDR3, RLDRAM, and RLDRAM II products infringe as many as fourteen Rambus patents and seeks monetary damages, treble damages, and injunctive relief. The accused products account for a significant portion of our net sales. On June 2, 2006, we filed an answer and counterclaim against Rambus alleging, among other things, antitrust and fraud claims. On January 9, 2009, in another lawsuit involving us and Rambus and involving allegations by Rambus of patent infringement against us in the U.S. District Court for the District of Delaware, Judge Robinson entered an opinion in favor of us holding that Rambus had engaged in spoliation and that the twelve Rambus patents in the suit were unenforceable against us. Rambus subsequently appealed the Delaware Court's decision to the U.S. Court of Appeals for the Federal Circuit. On May 13, 2011, the Federal Circuit affirmed Judge Robinson's finding of spoliation, but vacated the dismissal sanction and remanded the case to the Delaware District Court for analysis of the remedy based on the Federal Circuit's decision. On January 2, 2013, Judge Robinson entered a new opinion in our favor holding that Rambus had engaged in spoliation, that Rambus' spoliation was done in bad faith, that the spoliation prejudiced us, and that the appropriate sanction was to declare the twelve Rambus patents in the suit unenforceable against us. On March 27, 2013, Rambus filed a notice of appeal to the U.S. Court of Appeals for the Federal Circuit. The Northern District of California Court stayed the trial of the patent phase of the Northern District of California case upon appeal of the spoliation issue to the Federal Circuit. In addition, others have asserted, and may assert in the future, that our products or manufacturing processes infringe their intellectual property rights. (See "Item 1. Legal Proceedings" for additional details on these lawsuits.)

We are unable to predict the outcome of assertions of infringement made against us. A court determination that our products or manufacturing processes infringe the intellectual property rights of others could result in significant liability and/or require us to make material changes to our products and/or manufacturing processes. Any of the foregoing results could have a material adverse effect on our business, results of operations or financial condition.

We have a number of patent and intellectual property license agreements. Some of these license agreements require us to make one time or periodic payments. We may need to obtain additional patent licenses or renew existing license agreements in the future. We are unable to predict whether these license agreements can be obtained or renewed on acceptable terms.

**Products that fail to meet specifications, are defective or that are otherwise incompatible with end uses could impose significant costs on us.**

Products that do not meet specifications or that contain, or are perceived by our customers to contain, defects or that are otherwise incompatible with end uses could impose significant costs on us or otherwise materially adversely affect our business, results of operations or financial condition. From time to time we experience problems with nonconforming, defective or incompatible products after we have shipped such products. In recent periods we have further diversified and expanded our product offerings which could potentially increase the chance that one or more of our products could fail to meet specifications in a particular application. As a result of these problems we could be adversely affected in several ways, including the following:

- we may be required to compensate customers for costs incurred or damages caused by defective or incompatible product or replace products,
- we could incur a decrease in revenue or adjustment to pricing commensurate with the reimbursement of such costs or alleged damages, and
- we may encounter adverse publicity, which could cause a decrease in sales of our products.

**New product development may be unsuccessful.**

We are developing new products that complement our traditional memory products or leverage their underlying design or process technology. We have made significant investments in product and process technologies and anticipate expending significant resources for new semiconductor product development over the next several years. The process to develop DRAM, NAND Flash, NOR Flash and certain specialty memory products requires us to demonstrate advanced functionality and performance, many times well in advance of a planned ramp of production, in order to secure design wins with our customers. There can be no assurance that our product development efforts will be successful, that we will be able to cost-effectively manufacture new products, that we will be able to successfully market these products or that margins generated from sales of these products will allow us to recover costs of development efforts.

**We may incur additional material restructure or other charges in future periods.**

In response to severe downturns in the semiconductor memory industry and global economic conditions, we implemented restructure plans in prior periods and may need to implement restructure initiatives in future periods. We may restructure or dispose of assets as we continue to optimize our manufacturing operations. As a result, we could incur restructure charges (including but not limited to severance and other termination benefits, losses on disposition or impairment of equipment or other long-lived assets and inventory write downs), lose production output, lose key personnel and experience disruptions in our operations and difficulties in the timely delivery of products. In connection with these actions, we may incur restructure charges or other losses. For example, in the second quarter of 2013, we recorded an estimated $62 million loss in connection with the planned disposal of our 200mm wafer fabrication facility in Avezzano, Italy.

**If our manufacturing process is disrupted, our business, results of operations or financial condition could be materially adversely affected.**

We manufacture products using highly complex processes that require technologically advanced equipment and continuous modification to improve yields and performance. Difficulties in the manufacturing process or the effects from a shift in product mix can reduce yields or disrupt production and may increase our per gigabit manufacturing costs. Additionally, our control over operations at our IMFT, Inotera and MP Mask joint ventures is limited by our agreements with our partners. From time to time, we have experienced disruptions in our manufacturing process as a result of power outages, improperly functioning equipment and equipment failures. If production at a fabrication facility is disrupted for any reason, manufacturing yields may be adversely affected or we may be unable to meet our customers' requirements and they may purchase products from other suppliers. This could result in a significant increase in manufacturing costs or loss of revenues or damage to customer relationships, which could materially adversely affect our business, results of operations or financial condition.

**Consolidation of industry participants and governmental assistance to some of our competitors may contribute to uncertainty in the semiconductor memory industry and negatively impact our ability to compete.**

In recent years, supply of memory products has significantly exceeded customer demand resulting in significant declines in average selling prices of DRAM, NAND Flash and NOR Flash products and substantial operating losses by us and our competitors. The operating losses as well as limited access to sources of financing have led to the deterioration in the financial condition of a number of industry participants. Some of our competitors may try to enhance their capacity and lower their cost structure through consolidation. In addition, some governments have provided, and may be considering providing, significant financial assistance to some of our competitors. Consolidation of industry competitors could put us at a competitive disadvantage.

**The limited availability of raw materials, supplies or capital equipment could materially adversely affect our business, results of operations or financial condition.**

Our operations require raw materials that meet exacting standards. We generally have multiple sources of supply for our raw materials. However, only a limited number of suppliers are capable of delivering certain raw materials that meet our standards. In some cases, materials are provided by a single supplier. Various factors could reduce the availability of raw materials such as silicon wafers, photomasks, chemicals, gases, photoresist, lead frames and molding compound. Shortages may occur from time to time in the future. In addition, disruptions in transportation lines could delay our receipt of raw materials. Lead times for the supply of raw materials have been extended in the past. If our supply of raw materials is disrupted or our lead times extended, our business, results of operations or financial condition could be materially adversely affected.

Our operations are dependent on our ability to procure advanced semiconductor equipment that enables the transition to lower cost manufacturing processes. For certain key types of equipment, including photolithography tools, we are sometimes dependent on a single supplier. In recent periods we have experienced difficulties in obtaining some equipment on a timely basis due to the supplier's limited capacity. Our inability to timely obtain this equipment could adversely affect our ability to transition to next generation manufacturing processes and reduce costs. Delays in obtaining equipment could also impede our ability to ramp production at new facilities and increase our overall costs of the ramp. If we are unable to timely obtain advanced semiconductor equipment, our business, results of operations or financial condition could be materially adversely affected.

**Our results of operations could be affected by natural disasters and other events in the locations in which we or our customers or suppliers operate.**

We have manufacturing and other operations in locations subject to natural occurrences such as severe weather and geological events including earthquakes or tsunamis that could disrupt operations. In addition, our suppliers and customers also have operations in such locations. A natural disaster that results in a prolonged disruption to our operations, or the operations of our customers or suppliers, may adversely affect our business, results of operations or financial condition.

**Our net operating loss and tax credit carryforwards may be limited.**

We have a valuation allowance against substantially all U.S. net deferred tax assets. As of August 30, 2012, our federal, state and foreign net operating loss carryforwards were $3.5 billion, $2.2 billion and $737 million, respectively. If not utilized, substantially all of our federal and state net operating loss carryforwards will expire in 2023 to 2032 and the foreign net operating loss carryforwards will begin to expire in 2017. As of August 30, 2012, our federal and state tax credit carryforwards were $208 million and $203 million respectively. If not utilized, substantially all of our federal and state tax credit carryforwards will expire in 2013 to 2032. As a consequence of prior business acquisitions, utilization of the tax benefits for some of the tax carryforwards is subject to limitations imposed by Section 382 of the Internal Revenue Code and some portion or all of these carryforwards may not be available to offset any future taxable income. The determination of these tax limitations is complex and requires a significant amount of judgment by us with respect to analysis of past transactions.

**Changes in foreign currency exchange rates could materially adversely affect our business, results of operations or financial condition.**

Across our multi-national operations, there are transactions and balances denominated in currencies other than the U.S. dollar (our reporting currency), primarily the Singapore dollar, euro, shekel and yen. We recorded net losses from changes in currency exchange rates of $6 million for 2012, $6 million for 2011 and $23 million for 2010. Based on our foreign currency exposures from monetary assets and liabilities, offset by balance sheet hedges, we estimate that a 10% adverse change in exchange rates versus the U.S. dollar would result in losses of approximately $3 million as of February 28, 2013. In the event that the U.S. dollar weakens significantly compared to the Singapore dollar, euro, shekel or yen, our results of operations or financial condition may be adversely affected.

In connection with the Sponsor Agreement, we entered into currency option transactions to mitigate the risk that increases in exchange rates have on our planned yen payments. We settled the options on March 26, 2013 and paid $191 million. On March 26, 2013, we executed a series of separate currency exchange transactions to hedge our exposure to the yen-denominated acquisition payments pursuant to which we entered into below market forward contracts to buy 80 billion yen and purchased put options to sell 80 billion yen. The maximum net loss of these yen currency forward contracts and put options could be $30 million if the exchange rate for the yen per U.S. dollar were 94.24 or higher on September 25, 2013.

**We face risks associated with our international sales and operations that could materially adversely affect our business, results of operations or financial condition.**

Sales to customers outside the United States approximated 86% of our consolidated net sales for the first six month of 2013. In addition, a substantial portion of our manufacturing operations are located outside the United States. In particular, a significant portion of our manufacturing operations are concentrated in Singapore. Our international sales and operations are subject to a variety of risks, including:

- export and import duties, changes to import and export regulations, and restrictions on the transfer of funds;
- compliance with U.S. and international laws involving international operations, including the Foreign Corrupt Practices Act, export control laws and similar rules and regulations;
- political and economic instability;
- problems with the transportation or delivery of our products;
- issues arising from cultural or language differences and labor unrest;
- longer payment cycles and greater difficulty in collecting accounts receivable;
- compliance with trade, technical standards and other laws in a variety of jurisdictions;
- contractual and regulatory limitations on our ability to maintain flexibility with our staffing levels;
- disruptions to our manufacturing operations as a result of actions imposed by foreign governments;
- changes in economic policies of foreign governments; and

- difficulties in staffing and managing international operations.

These factors may materially adversely affect our business, results of operations or financial condition.

**Breaches of our network security could expose us to losses.**

We manage and store on our network systems, various proprietary information and sensitive or confidential data relating to our operations. We also process, store, and transmit large amounts of data for our customers, including sensitive personal information. Computer programmers and hackers may be able to gain unauthorized access to our network system and steal proprietary information, compromise confidential information, create system disruptions, or cause shutdowns. These parties may also be able to develop and deploy viruses, worms, and other malicious software programs that disrupt our operations and create security vulnerabilities. Attacks on our network systems could result in significant losses and damage our reputation with customers.

**We are subject to counterparty default risks.**

We have numerous arrangements with financial institutions that subject us to counterparty default risks, including cash deposits, investments, foreign currency option and forward contracts, and capped-call contracts on our stock. As a result, we are subject to the risk that the counterparty to one or more of these arrangements will default on its performance obligations. A counterparty may default rapidly and without notice to us, which could limit our ability to take action to mitigate our exposure. Additionally, our ability to mitigate our exposures may be constrained by the terms of our contractual arrangements or because market conditions prevent us from taking effective action. If one of our counterparties becomes insolvent or files for bankruptcy, our ability to recover any losses suffered as a result of that counterparty's default may be limited by the liquidity of the counterparty or the applicable laws governing the bankruptcy proceeding. In the event of such default, we could incur significant losses, which could adversely impact our business, results of operations or financial condition.

## ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS

During the second quarter of 2013, we acquired, as payment of withholding taxes in connection with the vesting of restricted stock and restricted stock unit awards, 348,172 shares of our common stock at an average price per share of $7.33. We retired these shares in the second quarter of 2013.

| Period | Total number of shares purchased | Average price paid per share | Total number of shares (or units) purchased as part of publicly announced plans or programs | Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs |
|---|---|---|---|---|
| November 30, 2012 - January 3, 2013 | 123,432 | $ 6.42 | N/A | N/A |
| January 4, 2013 - January 31, 2013 | 222,704 | 7.82 | N/A | N/A |
| February 1, 2013 - February 28, 2013 | 2,036 | 7.92 | N/A | N/A |
| | 348,172 | 7.33 | | |

## ITEM 6. EXHIBITS

| Exhibit Number | Description of Exhibit |
|---|---|
| 1.5 | Purchase Agreement, dated as of February 6, 2013, by and among Micron Technology, Inc. and Morgan Stanley & Co. LLC, J.P. Morgan Securities LLC and Goldman, Sachs & Co., as representatives of the initial purchasers (1) |
| 3.1 | Restated Certificate of Incorporation of the Registrant (2) |
| 3.2 | Bylaws of the Registrant, as amended (3) |
| 4.1 | Indenture, dated as of February 12, 2013, by and between Micron Technology, Inc. & U.S. Bank National Association, as trustee (1) |
| 4.2 | Form of 2033E Note (included in Exhibit 4.1) (1) |
| 4.3 | Indenture, dated as of February 12, 2013, by and between Micron Technology, Inc. & U.S. Bank National Association, as trustee (1) |
| 4.4 | Form of 2033F Note (included in Exhibit 4.1) (1) |
| 10.1 | Form of Capped Call Confirmation (1) |
| 10.122* | Supply Agreement, dated January 17, 2013, by and among Micron Technology, Inc., Micron Semiconductor Asia Pte. Ltd. and Inotera Memories, Inc. |
| 10.123* | Joint Venture Agreement, dated January 17, 2013, by and among Micron Semiconductor B.V., Numonyx Holdings B.V., Micron Technology Asia Pacific, Inc. and Nanya Technology Corporation |
| 10.124* | Facilitation Agreement, dated January 17, 2013, by and among Micron Semiconductor B.V., Numonyx Holdings B.V., Micron Technology Asia Pacific, Inc., Nanya Technology Corporation and Inotera Memories, Inc. |
| 10.125 | Micron Guaranty Agreement, dated January 17, 2013, by Micron Technology, Inc. in favor of Nanya Technology Corporation |
| 10.126* | Technology Transfer and License Option Agreement for 20NM Process Node, dated January 17, 2013, by and between Micron Technology, Inc. and Nanya Technology Corporation |
| 10.127* | Omnibus IP Agreement, dated January 17, 2013, by and between Nanya Technology Corporation and Micron Technology, Inc. |
| 10.128* | Second Amended and Restated Technology Transfer and License Agreement for 68-50NM Process Nodes, dated January 17, 2013, by and between Micron Technology, Inc. and Nanya Technology Corporation |
| 10.129* | Third Amended and Restated Technology Transfer and License Agreement, dated January 17, 2013, by and between Micron Technology, Inc. and Nanya Technology Corporation |
| 10.130* | Omnibus IP Agreement, dated January 17, 2013, by and between Micron Technology, Inc. and Inotera Memories, Inc. |
| 31.1 | Rule 13a-14(a) Certification of Chief Executive Officer |
| 31.2 | Rule 13a-14(a) Certification of Chief Financial Officer |
| 32.1 | Certification of Chief Executive Officer Pursuant to 18 U.S.C. 1350 |
| 32.2 | Certification of Chief Financial Officer Pursuant to 18 U.S.C. 1350 |
| 101.INS | XBRL Instance Document |
| 101.SCH | XBRL Taxonomy Extension Schema Document |
| 101.CAL | XBRL Taxonomy Extension Calculation Linkbase Document |
| 101.DEF | XBRL Taxonomy Extension Definition Linkbase Document |
| 101.LAB | XBRL Taxonomy Extension Label Linkbase Document |
| 101.PRE | XBRL Taxonomy Extension Presentation Linkbase Document |

(1) Incorporated by reference to Current Report on Form 8-K dated February 6, 2013
(2) Incorporated by reference to Quarterly Report on Form 10-Q for the quarter ended May 31, 2001
(3) Incorporated by reference to Current Report on Form 8-K dated January 22, 2013

* Portions of this exhibit have been omitted pursuant to a request for confidential treatment filed with the Commission.

**SIGNATURES**

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

Micron Technology, Inc.

(Registrant)

Date: April 8, 2013

/s/ Ronald C. Foster

Ronald C. Foster
Vice President of Finance and Chief Financial Officer (Principal Financial and Accounting Officer)

**EXHIBIT 10.122**

**[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT**

**CONFIDENTIAL**

# SUPPLY AGREEMENT

This SUPPLY AGREEMENT is made and entered into on this 17th day of January, 2013 (the "**Closing Date**") and shall be effective retroactively as of January 1, 2013 (the "**Effective Date**"), by and among MICRON TECHNOLOGY, INC., a Delaware corporation ("**Micron**"), MICRON SEMICONDUCTOR ASIA PTE. LTD., a Singapore private limited company and wholly-owned Subsidiary (as defined hereinafter) of Micron (the "**Purchaser**"), and INOTERA MEMORIES, INC. (Inotera Memories, Inc. [Translation from Chinese]), a company incorporated under the laws of the Republic of China (the "**R.O.C.**") ("**Inotera**").

## RECITALS

A. Inotera is engaged in the manufacture of DRAM Products (as defined hereinafter) in wafer form.

B. Micron, the Purchaser and Inotera (each, a "**Party**" and collectively, the "**Parties**") desire Inotera to generally supply Conforming Wafers (as defined hereinafter), Pre-Qual Engineering Wafers (as defined hereinafter) and Non-Conforming Wafers (as defined hereinafter) to the Purchaser upon the terms and subject to the conditions set forth in this Agreement.

C. Contemporaneously herewith, Inotera and Nanya Technology Corporation (Nanya Technology Corporation [Translation from Chinese]), a company incorporated under the laws of the R.O.C. ("**NTC**"), have entered into an agreement to be effective as of the Effective Date pursuant to which Inotera will supply wafers to NTC upon the terms and subject to the conditions set forth therein (the "**NTC Supply Agreement**").

D. Contemporaneously herewith, the Third Amended and Restated Supply Agreement, dated June 8, 2011 (and effective as of June 8, 2011), by and among Micron, NTC and Inotera (the "**Existing Supply Agreement**") has been terminated effective retroactively as if such termination had occurred immediately prior to the commencement of the Effective Date.

E. It is the present intention of the Parties that the level of mutual cooperation and support among the Parties in connection with their performance of this Agreement be consistent with the level of mutual cooperation and support between Micron and Inotera in connection with their performance of the Existing Supply Agreement.

## AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound do hereby agree as follows:**[***]**

**[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT**

**CONFIDENTIAL**

## ARTICLE 1
## DEFINITIONS; CERTAIN INTERPRETIVE MATTERS

1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the respective meanings set forth below:

"**Affiliate**" means, with respect to any specified Person, any other Person that directly or indirectly, including through one or more intermediaries, Controls, or is Controlled by, or is under common Control with such specified Person; and the term "**affiliated**" has a meaning correlative to the foregoing.

"**Agreement**" means this Supply Agreement, together with the Schedules attached hereto (but excluding the sample calculations set forth in any attachments to such Schedules, which are provided for illustrative purposes only and shall not constitute terms hereof).

"**[***]**" means, for any particular Design ID in a particular Delivery Month, if the [***] included in the [***] of Conforming Wafers delivered to the Purchaser in such Delivery Month in accordance with Section [***], ***the product of*** **(i)** the [***] for such Delivery Month, **multiplied by (ii)** ***the quotient of*** **(A)** the number of [***] in such Delivery Month, **divided by (B)** the number of [***] in such Delivery Month.

"**[***]**" means, for any particular Design ID in a particular Delivery Month, if Inotera is required to [***] in the [***] of Conforming Wafers delivered to the Purchaser in such Delivery Month pursuant to Section [***], ***the product of*** **(i)** the [***] for all such [***] included in the [***] delivered to the Purchaser in such Delivery Month pursuant to Section [***], **multiplied by (ii)** ***the quotient of*** **(A)** the number of [***] in such Delivery Month, **divided by (B)** the number of [***] in such Delivery Month.

"**[***]**" means, for any particular Design ID in a particular Delivery Month, if [***] included in the [***] of Conforming Wafers delivered to the Purchaser in such Delivery Month in accordance with Section [***], ***the product of*** **(i)** the [***] included in the [***] of Conforming Wafers delivered to the Purchaser in such Delivery Month in accordance with Section [***], **multiplied by (ii)** ***the quotient of*** **(A)** the number of [***] in such Delivery Month, **divided by (B)** the number of [***] in such Delivery Month.

"**[***]**" means, for any particular Design ID in a particular Delivery Month, if [***] included in the [***] of Conforming Wafers delivered to the Purchaser in such Delivery Month in accordance with Section [***], ***the product of*** **(i)** the [***] included in the [***] of Conforming Wafers delivered to the Purchaser in such Delivery Month in accordance with Section [***], **multiplied by (ii)** ***the quotient of*** **(A)** the number of [***] in such Delivery Month, **divided by (B)** the number of [***] in such Delivery Month.

"**[***]**" means, for any particular Design ID in a particular Delivery Month, ***the product of*** **(a)** the [***] for such Delivery Month, **multiplied by (b)** ***the quotient of*** **(i)** the number of [***] in such Delivery Month, **divided by (ii)** the number of [***] in such Delivery Month.

"**[***]**" means, for any particular Design ID in a particular Delivery Month, if the [***] for a particular [***] included in the [***] of Conforming Wafers delivered to the Purchaser in such Delivery Month in accordance with Section [***], ***the product of*** **(i)** the [***] for such Delivery Month, **multiplied by (ii)** ***the quotient of*** **(A)** the number of [***] in such Delivery Month, **divided by (B)** the number of [***] in such Delivery Month.

"**Annual Calendar**" shall have the meaning set forth in Section 3.2.

"**Applicable Law**" means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"**Applicable [***] Deadline**" means the later to occur of (a) the date that is [***] months after [***] at the [***] in the Micron Fab Network and (b) the date that is [***] months after [***] on the agreed upon [***] created using a [***] at the Inotera Fab, as [***], where necessary and appropriate, with [***] at other fabs in the Micron Fab Network; *provided*, *however*, that, if such [***] at another fab in the Micron Fab Network has not [***] by the end of the [***] month of such [***] month period, such period shall be suspended until such [***] at another fab in the Micron Fab Network has [***].

"**Applicable [***] Target**" means:

(a) if the [***] sufficient and appropriate for [***] on the [***], as forecasted in good faith by Micron, is less than [***];

(b) if the [***] sufficient and appropriate for [***] on the [***], as forecasted in good faith by Micron, is (i) equal to or greater than [***] and (ii) less than [***];

(c) if the [***] sufficient and appropriate for [***] on the [***], as forecasted in good faith by Micron, is (i) equal to or greater than [***] and (ii) less than [***];

(d) if the [***] sufficient and appropriate for [***] on the [***], as forecasted in good faith by Micron, is (i) equal to or greater than [***] and (ii) less than [***]; and

(e) if the [***] sufficient and appropriate for [***] on the [***], as forecasted in good faith by Micron, is (i) equal to or greater than [***] and (ii) less than [***].

"**Boundary Conditions**" means, with respect to the Inotera Fab, a requirement that, at any point in time:

(a) there shall be [***] in use for the manufacture of DRAM Products, *provided* that at the Inotera Fab, there also may be [***] in use for [***];

(b) subject to clause (c) below, the Inotera Fab shall manufacture for the Purchaser DRAM Products with [***]; *provided*, *however*, that if at any time the Inotera Fab is manufacturing for the Purchaser DRAM Products with [***] (or, if and when the [***] at the Inotera Fab, such [***] as is agreed in writing by the Parties) and the Purchaser requests that the Inotera Fab manufacture for the Purchaser DRAM Products with [***] manufactured by the Inotera Fab, the Inotera Fab shall also manufacture for the Purchaser DRAM Products with [***] manufactured by the Inotera Fab [***] to manufacture DRAM Products with [***], including such [***], would be [***] the following for [***] in the [***] the Inotera Fab [***] being manufactured by or for Micron and its Affiliates at such fab [***] for the Inotera Fab, [***] being manufactured at [***] for such [***] at the Inotera Fab [***] DRAM Products (in wafer form) meeting the applicable specifications that can be manufactured by or for Micron and its Affiliates at [***]; *provided further*, *however*, that the foregoing shall be applied only to determine whether the Inotera Fab [***] manufacture DRAM Products with [***] manufactured by the Inotera Fab and only in the circumstance specified above and that the foregoing shall not be applied [***] or otherwise [***] in any circumstance [***] the Purchaser to [***] the Inotera Fab to manufacture for the Purchaser DRAM Products with [***] manufactured by the Inotera Fab;

(c) the Inotera Fab shall not manufacture DRAM Products [***] for the Purchaser unless [***] of such [***] in the [***] to be delivered in such [***] of such [***] delivered during such [***]; and

(d) the Inotera Fab shall not manufacture DRAM Products [***] for the Purchaser unless (i) the Inotera Fab is [***] for such [***], or (ii) the Purchaser has [***] the Inotera Fab [***] for such DRAM Products [***] and such DRAM Products [***] by a [***] of the [***];

as such requirement may be altered from time to time by the Purchaser with the consent of Inotera, which shall not be unreasonably withheld, conditioned or delayed; *provided*, *however*, that, notwithstanding anything above to the contrary, DRAM Products that are manufactured [***] shall be [***] to be [***] of a [***] for purposes of the [***] described in clauses (b) and (c) above.

"**Business Day**" means a day that is not a Saturday, Sunday or other day on which commercial banking institutions in either the R.O.C. or the State of New York are authorized or required by Applicable Law to be closed.

"**Business Plan**" means, at any particular time, the three (3) year business plan then existing for Inotera, as approved by the board of directors of Inotera.

"**Closing Date**" shall have the meaning set forth in the preamble to this Agreement.

"**Committed NTC Manufacturing Capacity**" means, during the NTC Wind-Down Period for each Process Node, the number of wafers meeting the applicable specifications that can be manufactured for NTC by Inotera pursuant to the NTC Supply Agreement from: (a) Wafer Starts prior to February 1, 2013 utilizing the [***] Process Node as set forth in the Manufacturing Plan attached as Schedule 3.1; (b) Wafer Starts prior to February 1, 2013 utilizing the [***] Process Node as set forth in the Manufacturing Plan attached as Schedule 3.1; and (c) up to [***] in each Fiscal Month commencing after January 31, 2013 and ending prior to November 1, 2013 utilizing the [***] Process Node (with the precise number of Wafer Starts in any such Fiscal Month to be specified by Inotera to the Purchaser in writing at least [***] days prior to the beginning of such Fiscal Month based on and consistent with the forecasts provided to Inotera by NTC under the NTC Supply Agreement), *provided* that such Wafer Starts contemplated by this clause (c) for any particular Fiscal Month shall be of DRAM Products having one of the following Design IDs: [***].

"**Committed Purchaser Manufacturing Capacity**" means:

(a) at any time during the NTC Wind-Down Period, 100% of the Manufacturing Capacity for each Process Node installed at the Inotera Fab after taking into account the Committed NTC Manufacturing Capacity;

(b) at any time during the Term (other than during the NTC Wind-Down Period), 100% of the Manufacturing Capacity for each Process Node installed at the Inotera Fab; and

(c) at any time during the Purchaser Wind-Down Period, the portion of the Manufacturing Capacity for each Process Node installed at the Inotera Fab as determined in accordance with Sections 11.1(d) and 11.1(e).

"**Conforming Wafer**" means a wafer containing DRAM Products produced by Inotera for delivery to the Purchaser under this Agreement following the qualification of such DRAM Products that (a) meets the applicable Specifications for a Conforming Wafer containing such DRAM Products immediately after Probe Testing and (b) has a minimum Die Yield equal to [***] (or, if the minimum die yield required for conforming wafers containing such DRAM Products in other fabs in the Micron Fab Network is different than [***], then such different percentage, which shall be set forth in a written notice to Inotera from Micron or the Purchaser).

"**Control**" means the power or authority, whether exercised or not, to direct the business, management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, which power or authority shall conclusively be presumed to exist upon possession of beneficial ownership or power to direct the vote of more than fifty percent (50%) of the votes entitled to be cast at a meeting of the members, shareholders or other equity holders of such Person or power to control the composition of a majority of the board of directors or like governing body of such Person; and the term "**Controlled**" has a meaning correlative to the foregoing.

"**Cycle-Time**" means the time required to process a wafer through a portion of the manufacturing process or through the manufacturing process as a whole, including Probe Testing.

"**Delivery Month**" means, with respect to any particular wafer delivered to the Purchaser pursuant to this Agreement, the Fiscal Month in which it is delivered to the Purchaser.

"**Demand Forecast**" shall have the meaning set forth in Section 3.4.

"**Design ID**" means a part number that is assigned to a unique DRAM Design of a particular DRAM Product, which may include a number or letter designating a specific device revision.

"**Die Yield**" means ***the quotient***, expressed as a percentage, ***of*** **(a)** the number of DRAM Products in die form that are manufactured on a wafer and that meet the applicable Specifications for such DRAM Products immediately after Probe Testing, **divided by (b)** the maximum number of such die that could be manufactured on such wafer to meet the applicable Specifications for such wafer using the applicable Process Node.

"**DRAM**" means a dynamic random access memory cell that functions by using a capacitor arrayed predominantly above the semiconductor substrate.

"**DRAM Design**" means all of the design elements, components, specifications and information required to manufacture the subject DRAM Product.

"**DRAM Product**" means any memory comprising DRAM, whether in die or wafer form.

"**Effective Date**" shall have the meaning set forth in the preamble to this Agreement.

"**EFF**" means, for DRAM Products of a particular Design ID, the time at which the first wafer of such DRAM Product is processed through the entire manufacturing process flow therefor in the Inotera Fab.

"**Environmental Laws**" means any and all laws, statutes, rules, regulations, ordinances, orders, codes or binding determinations of any Governmental Entity pertaining to the environment in any and all jurisdictions in which the Inotera Fab is located, including laws pertaining to the handling of wastes or the use, maintenance and closure of pits and impoundments, and other environmental conservation or protection laws.

"**Excursion**" means a performance deviation during the production process that is outside normal behavior, as defined by historical performance or as established by the Purchaser and Inotera in writing in the applicable Specifications, which may impact performance, Quality and Reliability or the Purchaser's customer delivery commitments for DRAM Product from Conforming Wafers.

"**Existing Supply Agreement**" shall have the meaning set forth in Recital D to this Agreement.

"**Final Invoice**" shall have the meaning set forth in Section 4.9(b).

"**Final Price**" shall have the meaning set forth in Section 5.1(b).

"**Fiscal Month**" means any of the twelve financial accounting months within the Fiscal Year.

"**Fiscal Quarter**" means any of the four financial accounting quarters within the Fiscal Year.

"**Fiscal Year**" means the fiscal year of Inotera for financial accounting purposes.

"**[***]**" shall have the meaning set forth in Schedule 3.7.

"**[***]**" shall have the meaning set forth in Section 3.7.

"**Force Majeure Event**" means the occurrence of an event or circumstance beyond the reasonable control of the Party and includes: (a) explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; (c) acts of Governmental Entities; (d) labor disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or unlawful; (e) failures or fluctuations in electrical power or telecommunications service or equipment; and (f) delays caused by nonperformance of Inotera, in the case of Micron or the Purchaser, or Micron or the Purchaser, in the case of Inotera, or nonperformance by a Third Party (except for delays caused by such Party's subcontractors or agents).

"**GAAP**" means generally accepted accounting principles.

"**Governmental Entity**" means any governmental authority or entity, including any agency, board, bureau, commission, court, municipality, department, subdivision or instrumentality thereof, or any arbitrator or arbitration panel.

"**Hazardous Substances**" means any asbestos, any flammable, explosive, radioactive, hazardous, toxic, contaminating, polluting matter, waste or substance, including any material defined or designated as a hazardous or toxic waste, material or substance, or other similar term, under any Environmental Laws in effect or that may be promulgated in the future.

"**Indemnified Losses**" mean all direct, out-of-pocket liabilities, damages, losses, costs and expenses (including reasonable attorneys' and consultants' fees and expenses).

"**Indemnified Party**" shall have the meaning set forth in Section 9.2(a).

"**Indemnifying Party**" shall have the meaning set forth in Section 9.2(a).

"**Inotera**" shall have the meaning set forth in the preamble to this Agreement.

"**Inotera Fab**" shall have the meaning set forth in Section 1.2(c).

"**Inotera Financial Report**" shall have the meaning set forth in Section 3.11.

"**[***]**" has the meaning set forth on Schedule 3.8.

"**[***]**" has the meaning set forth in Section 3.8(e).

"**Joint Venture Agreement**" means that certain Joint Venture Agreement between MNL, Numonyx B.V., MTAP and NTC, dated as of the Closing Date, as amended, relating to Inotera.

"**Line Yield**" means, for any given period of time, ***the quotient***, expressed as a percentage, ***of*** **(a)** the number of Conforming Wafers and Pre-Qual Engineering Wafers produced during such period of time, **divided by (b)** the number of all wafers started during such period of time.

"**Long Range Forecast**" shall have the meaning set forth in Section 3.15

"**Manufacturing Capacity**" means, for each Process Node at the Inotera Fab for any particular period of time, the maximum number of Conforming Wafers that can be manufactured through Probe Testing and delivered to the Purchaser utilizing such Process Node at the Inotera Fab during such period of time, assuming Inotera only manufactured Conforming Wafers during such period of time.

"**Manufacturing Plan**" shall have the meaning set forth in Section 3.1.

"**Mask [***]**" has the meaning set forth in Section 2.3(b).

"**Micron**" shall have the meaning set forth in the preamble to this Agreement.

"**Micron Fab Network**" means the fabs manufacturing DRAM Products for Micron and its Affiliates, including the Inotera Fab.

"**Micron/Inotera Confidentiality Agreement**" means that certain Mutual Nondisclosure Agreement between Micron and Inotera, dated as of the Closing Date, as amended.

"**[***]**" shall have the meaning set forth in Section 3.12(e).

"**MNL**" means Micron Semiconductor B.V., a private limited liability company organized under the laws of the Netherlands.

"**Monthly Planning Statement**" shall have the meaning set forth in Section 3.3.

"**Monthly Financial Review**" shall have the meaning set forth in Section 3.14(b).

"**MTAP**" means Micron Technology Asia Pacific, Inc., an Idaho corporation.

"**Non-Conforming Wafer**" means a wafer containing DRAM Products produced by Inotera for delivery to the Purchaser under this Agreement following the qualification of such DRAM Products that (a) fails to meet the applicable Specifications for a Conforming Wafer containing such DRAM Products immediately after Probe Testing or (b) has a minimum Die Yield below that required for a Conforming Wafer of such DRAM Products.

"**NTC**" shall have the meaning set forth in Recital C to this Agreement.

"**NTC Supply Agreement**" shall have the meaning set forth in Recital C to this Agreement.

"**NTC Wind-Down Period**" means the period from the Effective Date through December 31, 2013.

"**Numonyx B.V.**" means Numonyx Holdings B.V., a private limited liability company organized under the laws of the Netherlands.

"**Operational Report**" shall have the meaning set forth in Section 3.12.

"**[***]**" shall have the meaning set forth in Section 11.2(c).

"**Party**" and "**Parties**" shall have the meanings set forth in Recital B to this Agreement.

"**Performance Criteria**" means the factors of [***].

"**Permitted Disclosures**" shall have the meaning set forth in Section 3.16.

"**Person**" means any natural person, corporation, joint stock company, limited liability company, association, partnership, firm, joint venture, organization, business, trust, estate or any other entity or organization of any kind or character.

"**Preliminary Price**" means, for a particular Delivery Month, (a) with respect to Conforming Wafers, Inotera's estimate, as of the time Inotera delivers the Preliminary Price Notice with respect to such Delivery Month, of the Price that Inotera will charge under this Agreement for such Conforming Wafers, as reasonably determined by Inotera, with such estimate being based on the [***] for the [***], for products as [***] to such [***] (or such other [***], or combination or derivation therefrom, as the Parties may mutually agree in writing), (b) with respect to Pre-Qual Engineering Wafers, [***], and (c) with respect to Non-Conforming Wafers, an amount [***] per Non-Conforming Wafer, as mutually agreed in writing by the Parties.

"**Preliminary Price Notices**" shall have the meaning set forth in Section 4.4(a).

"**Pre-Qual Engineering Wafers**" means, with respect to a particular DRAM Product, wafers of such DRAM Product requested by the Purchaser for delivery to the Purchaser in lieu of Conforming Wafers in any Purchase Order placed, or any change order to a Purchase Order issued, as contemplated by Section 4.3, that are manufactured to the full extent of the applicable process flow but prior to the qualification of such DRAM Product at the Inotera Fab.

"**Price**" shall have the meaning set forth in Section 5.1(a).

"**Price True-Up Amount**" means, for a particular Delivery Month, an amount, which may be positive or negative, equal to ***the sum of*** **(i)** ***the sum of*** **(A)** the aggregate [***] delivered during such Delivery Month to the Purchaser calculated in accordance with [***], **plus (B)** the aggregate [***] delivered during such Delivery Month to the Purchaser pursuant to [***], **minus (ii)** the aggregate balance owing to Inotera shown on all Pro Forma Invoices accompanying the deliveries of Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers during such Delivery Month to the Purchaser.

"**Probe Testing**" means testing, using a wafer test program as set forth in the applicable Specifications for such wafer, of a wafer that has completed all processing steps deemed necessary to complete the creation of the desired integrated circuits in the die on such wafer, the purpose of which test is to determine how many and which of the die meet the applicable criteria for such die set forth in the Specifications for such die.

"**Probe Yield**" means, with respect to any period of time, ***the quotient***, expressed as a percentage, ***of*** **(a)** the number of DRAM Products in die form meeting the applicable Specifications for such DRAM Products during such period of time, **divided by (b)** the maximum number of die on Conforming Wafers probed during such period of time.

"**Process Node**" means a [***] that enables the production of DRAM Products in wafer form for [***] often designated by the [***] (*e.g.*, the 42nm Process Node or the 30nm Process Node, etc.). For the avoidance of doubt, the Parties acknowledge and agree that the [***] Process Node utilized at the Inotera Fab is not the same Process Node as the [***] Process Node utilized by [***].

"**Process Node Allocation Notice**" shall have the meaning set forth in Section 11.1(e).

"**Pro Forma Invoice**" shall have the meaning set forth in Section 4.9(a).

"**[***]**" shall have the meaning set forth in Section 3.8(a).

"**Purchase Order**" shall have the meaning set forth in Section 4.4(b).

"**Purchaser**" shall have the meaning set forth in the preamble to this Agreement.

"**Purchaser Indemnified Party**" means the Purchaser or any of its Affiliates, including Micron.

"**[***]**" shall have the meaning set forth in Section 3.9.

"**Purchaser [***] Report**" shall have the meaning set forth in Section 3.13.

"**[***]**" shall have the meaning set forth in Section 3.8(b).

"**Purchaser Wind-Down Period**" shall have the meaning set forth in Section 11.1(c).

"**Quality and Reliability**" means the quality and reliability standards for Conforming Wafers as set forth in the applicable Specifications for such Conforming Wafers or the Manufacturing Plan in effect from time to time.

"**Quarterly Business Review**" has the meaning set forth on Section 3.14(a).

"**Recoverable Taxes**" shall have the meaning set forth in Section 4.8(a).

"**[***] Notice**" shall have the meaning set forth in Section 3.8(a).

"**[***] Notice**" shall have the meaning set forth in Section 3.8(b).

"**Response to Forecast**" shall have the meaning set forth in Section 3.5.

"**Restriction Period**" means, with respect to any Segregated Employee, the period of time beginning on the date such Person becomes a Segregated Employee and ending on the date that is [***] months after the date such Person is no longer a Segregated Employee.

"**R.O.C.**" shall have the meaning set forth in the preamble to this Agreement.

"**[***]**" shall have the meaning set forth in Section 3.13.

"**Segregated Employees**" means (a) the accounting employees of Inotera that are responsible for performing, reviewing and approving the calculation of the Price for any DRAM Product sold to the Purchaser under this Agreement, and (b) the president of Inotera and the senior officer responsible for financial management of Inotera, *provided* that no [***], if any, shall be permitted to be a Segregated Employee.

"**Shared Design ID Wafers**" means all wafers with the same Design ID that are produced for both the Purchaser and other Persons.

"**Ship Lot Line Yield**" means, with respect to any lot of wafers, ***the quotient***, expressed as a percentage, ***of*** **(a)** the number of Conforming Wafers manufactured from such lot, **divided by (b)** the number of Wafer Starts from such lot.

"**Specifications**" means those specifications used to describe, characterize, and define the quality and performance of a Conforming Wafer or a DRAM Product in die form, as applicable, in each case, as such specifications may be determined from time to time by the Purchaser and delivered in writing to Inotera.

"**Subsidiary**" means, with respect to any specified Person, any other Person that directly or indirectly, including through one or more intermediaries, is Controlled by such specified Person.

"**Swap Ratio**" means, with respect to any Pre-Qual Engineering Wafer, a ratio that will be used to [***] of such Pre-Qual Engineering Wafer to take into account the [***] required to produce such wafer compared to a Conforming Wafer generally, as such ratio is agreed by the Parties from time to time; *provided*, *however*, that, if the Parties cannot agree to such ratio for any particular Pre-Qual Engineering Wafer, the ratio for such Pre-Qual Engineering Wafer will be reasonably determined by the Purchaser.

"**Taiwan GAAP**" means GAAP used in the R.O.C., as in effect from time to time, consistently applied for all periods at issue.

"**Term**" shall have the meaning set forth in Section 11.1(a).

"**Third Party**" means any Person, other than Micron, Inotera or any of their respective Subsidiaries.

"**Third Party Claim**" means any claim, demand, lawsuit, complaint, cross-complaint or counter-complaint, arbitration, opposition, cancellation proceeding or other legal or arbitral proceeding of any nature brought in any court, tribunal or judicial forum anywhere in the world, regardless of the manner in which such proceeding is captioned or styled brought by any Third Party.

"**[***]**" shall have the meaning set forth in Section 11.2(c).

"**[***]**" shall have the meaning set forth in Schedule 3.8.

"**[***]**" shall have the meaning set forth in Section 3.8(e).

"**Wafer Start**" means the initiation of manufacturing services with respect to a wafer.

"**WIP**" means work in process at the Inotera Fab, including all wafers in wafer fabrication and sort and all completed Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers not yet delivered to the Purchaser or other Persons.

"**WIP Data**" means in-line inventory data, including wafer numbers, lot numbers, unit volumes, wafer volumes, Cycle-Times, Die Yield, Line Yield, Probe Yield and Ship Lot Line Yield.

"**WSTS Forecast**" means the forecast of semiconductor prices prepared by WSTS, Inc.

1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (i) all references to Sections, Articles, Exhibits, Appendices or Schedules are to Sections, Articles, Exhibits, Appendices or Schedules of or to this Agreement, (ii) each accounting term not otherwise defined in this Agreement (A) with respect to Micron or the Purchaser, has the meaning commonly applied to it in accordance with GAAP used in the United States, as in effect from time to time, consistently applied for all periods at issue, and (B) with respect to Inotera, has the meaning commonly applied to it in accordance with Taiwan GAAP, (iii) words in the singular include the plural and vice versa, (iv) the term "**including**" means "including without limitation," and (v) the terms "**herein**," "**hereof**," "**hereunder**" and words of similar import shall mean references to this Agreement as a whole and not to any individual section or portion hereof. All references to "**$**" or dollar amounts will be to lawful currency of the United States of America. All references to "**day**" or "**days**" mean calendar days, and all references to "**quarter(ly)**," "**month(ly)"** or "**year(ly)**" mean Fiscal Quarter, Fiscal Month or Fiscal Year, respectively, unless the context requires otherwise.

(b) No provision of this Agreement will be interpreted in favor of, or against, any Party by reason of the extent to which (i) such Party or its counsel participated in the drafting thereof, or (ii) such provision is inconsistent with any prior draft of this Agreement or such provision.

(c) For purposes of this Agreement, the "**Inotera Fab**" shall mean collectively the existing fabs of Inotera commonly referred to as "Fab 1," "Fab 2" and "Fab M" located at Hwa Ya Technology Park, Taoyuan, Taiwan.

(d) Notwithstanding anything herein to the contrary, the example calculations set forth in any attachments to the Schedules hereto shall not constitute terms of this Agreement and are provided for illustrative purposes only. In the event of any conflict between such example calculations and the terms of this Agreement, the terms of this Agreement shall govern and the Parties shall modify such example calculations to be consistent therewith.

## ARTICLE 2
## OBLIGATIONS OF THE PARTIES; PROCESSES AND CONTROLS

2.1 General Obligations.

(a) Inotera shall provide, develop and operate the Inotera Fab according to the Business Plan in effect from time to time and the obligations set forth herein (including the planning process set forth in Article 3).

(b) Inotera shall:

(i) manufacture Conforming Wafers for the Purchaser in accordance with (A) the applicable Boundary Conditions, (B) the applicable Specifications, (C) the Responses to Forecast developed in response to the Demand Forecasts provided by the Purchaser to Inotera in accordance with Article 3;

(ii) supply Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers to the Purchaser in accordance with the purchasing process set forth in Article 4; and

(iii) operate the Inotera Fab so that DRAM Product output from the Inotera Fab does not differ materially from that of any other fab in the Micron Fab Network as to the Specifications and Performance Criteria.

(c) The Purchaser shall purchase Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers from Inotera in accordance with the terms and conditions set forth herein.

2.2 Control; Processes. The Purchaser and Inotera shall review Inotera's control and process mechanisms, including such mechanisms that are utilized to ensure that all parameters of the Specifications and Performance Criteria are met or exceeded in Inotera's manufacture of Conforming Wafers. The Purchaser and Inotera agree to work together in good faith to define mutually agreeable control and process mechanisms, including the following: [***].

2.3 Production Masks.

(a) Inotera shall purchase masks required to manufacture [***] for DRAM Products manufactured by Inotera under this Agreement from [***], and Inotera may purchase masks required to manufacture [***] for DRAM Products manufactured by Inotera under this Agreement from [***] (other than [***]) approved in writing by Micron; *provided*, *however*, that, with respect to Inotera's purchase of any [***], such limitations shall not apply if [***] by [***]. If Inotera elects to purchase masks from [***], subject to [***] (such [***] to be determined in [***] sole discretion), [***] will provide to [***] the [***] determines, in its sole discretion, are

necessary to [***]. To the extent [***] provides [***] as contemplated by the immediately preceding sentence, [***] will pay to [***] associated with such [***] promptly after receiving an invoice in connection therewith. Notwithstanding anything in this Section 2.3(a) to the contrary, [***] shall be used for the [***] and any [***] of each [***] for a DRAM Product of [***]. Inotera shall have possession, but not ownership of any underlying copyrights, mask works or other intellectual property, of any physical production masks which Inotera obtains in accordance with this Section 2.3(a).

(b) Inotera shall promptly revise any mask set that is being utilized for the manufacture of DRAM Products by Inotera for delivery to the Purchaser under this Agreement as requested by the Purchaser or Micron from time to time; *provided*, *however*, that, [***] to such mask set as so revised [***] such mask set is [***], the [***] (the "**Mask [***]**") will be [***] to the [***] in the [***] in which the [***].

2.4 Designation of WIP.

(a) WIP Associated With Shared Design ID Wafers. Inotera shall ensure that WIP at the Inotera Fab associated with Shared Design ID Wafers is designated for the Purchaser and any other Persons for which it is produced from Wafer Start, and the Shared Design ID Wafers shall be allocated to the Purchaser and such other Persons immediately prior to Probe Testing by Design ID *pro rata* in accordance with the relative number of Wafer Starts of such Shared Design ID Wafers for each of the Purchaser and such other Persons during the Fiscal Month in which such Shared Design ID Wafers were started.

(b) Other WIP. Inotera shall ensure that WIP at the Inotera Fab associated with wafers (other than the Shared Design ID Wafers contemplated by Section 2.4(a)) to be produced for the Purchaser or any other Person is designated for the Purchaser or such other Person, as applicable, from Wafer Start.

2.5 Subcontractors. Inotera may utilize [***] as a subcontractor, subject to (a) the prior written approval of the Purchaser, which approval shall not be unreasonably withheld or delayed, and (b) compliance with the guidelines developed to manage the quality of such utilization in effect on the Effective Date (with such changes thereto as may from time to time be agreed in writing by the Parties). Inotera shall ensure that all contracts with [***] (a) shall provide Inotera with the same level of access and controls as Inotera provides to the Purchaser in this Agreement and (b) contain customary nondisclosure obligations in a form reasonably acceptable to the Purchaser.

2.6 [***] Notification. In addition to the Operational Report and the Quarterly Business Review, Inotera shall promptly notify the Purchaser of [***] affecting [***].

2.7 Traceability; Data Retention. The Purchaser and Inotera shall review Inotera's (a) [***] and producing the WIP Data and (b) data retention policy in regards to the WIP Data. Inotera agrees to maintain the WIP Data for a minimum of [***] (or such other period as may be agreed in writing by the Parties).

2.8 Access to WIP Data. Inotera shall provide the Purchaser with full access to its WIP Data (including with respect to Shared Design ID Wafers) no less frequently than [***] under normal circumstances, which data shall be no older than [***] old when accessed.

2.9 Additional Customer Requirements. The Purchaser shall inform Inotera in writing of any supplier requirements of any customer of the Purchaser relating to the Inotera Fab. The Purchaser and Inotera shall work together in good faith to satisfy such requirements.

2.10 [***]. Inotera will cooperate with Micron and the Purchaser, and work in good faith, to develop a [***] plan, including (a) discussing the possibility of [***] at the Inotera Fab, (b) agreeing in writing to a [***] for the [***] at the Inotera Fab, which may be updated from time to time by the Parties in writing, (c) [***] at the Inotera Fab that, as [***], where necessary and appropriate, with [***] at other fabs in the Micron Fab Network, [***] for the [***] at the Inotera Fab, (d) through the [***] the Inotera Fab and other fabs in the Micron Fab Network as necessary and appropriate, [***] on the agreed upon [***] using the [***] described in clause (c), as [***], where necessary and appropriate, with [***] at other fabs in the Micron Fab Network and thereafter [***] to complete the [***]; and (e) within [***] months after [***] on such [***] on such [***].

## ARTICLE 3
## PLANNING AND FORECASTING; PERFORMANCE REVIEWS AND REPORTS

3.1 Annual Manufacturing Plan. At least [***] days (or such other number of days as may be agreed in writing by the Parties) prior to the end of each Fiscal Year, Inotera shall prepare, under the direction of the president of Inotera, an annual manufacturing plan (the "**Manufacturing Plan**") for the next [***] (or such other period or periods as may be agreed in writing by the Parties) and shall submit the Manufacturing Plan to the Purchaser for its review and comment. The Manufacturing Plan shall reflect the planning process contained in this Article 3. The Manufacturing Plan shall address various manufacturing issues, including the DRAM Products to be manufactured, a loading plan (by Design ID and Process Node for the DRAM Products to be produced, including, if applicable, a breakout of the DRAM Products, by Design ID and Process Node, to be produced for any Persons other than the Purchaser) and weekly loading and output (including, if applicable, a breakout, by Design ID and Process Node, the wafers designated for any Persons other than the Purchaser). The Manufacturing Plan covering [***] and in effect as of the Effective Date has been agreed by the Parties, a copy of which (modified for convenience to reflect monthly loading and output rather than weekly) is attached as Schedule 3.1.

3.2 Annual Calendar. Prior to the beginning of each Fiscal Year, the Parties shall establish a planning calendar for such Fiscal Year (each, an "**Annual Calendar**") that sets forth key planning and finance dates during such Fiscal Year, which may include the dates on which the Parties will (a) deliver the Monthly Planning Statements (or the components thereof), the Demand Forecasts, the Responses to Forecast, the Operational Reports, the Long Range Forecast, the Preliminary Price Notices, the Purchase Orders and any other information that may be agreed in

writing by the Parties, and (b) hold the Quarterly Business Reviews and Monthly Financial Reviews described in Section 3.14, *provided* that such dates shall be consistent with this Article 3 and Article 4, as applicable, and shall generally be consistent with the Purchaser's internal planning calendar for such Fiscal Year. In addition, the Annual Calendar may reflect the dates during such Fiscal Year on which the Parties will be required by this Agreement to deliver Purchaser [***] Reports, Inotera Financial Reports and Final Invoices. The Parties may alter the dates described in an Annual Calendar at any time, *provided* that such altered dates are consistent with this Article 3 and Article 4, as applicable, and are agreed in writing by the Parties. Within ten (10) days after the Closing Date, the Parties will agree to the Annual Calendar for 2013.

3.3 Monthly Planning Statement. Each Fiscal Month, Inotera shall deliver to the Purchaser one or more statements (collectively for each Fiscal Month, a "**Monthly Planning Statement**") setting forth (a) for each Process Node, the anticipated Committed Purchaser Manufacturing Capacity for each of the next [***] Fiscal Months (or such other period as may be agreed in writing by the Parties) taking into account, among other things, [***] that were included in the Response to Forecast delivered in the prior Fiscal Month, (b) for each Design ID, the [***] as the Purchaser and Inotera may agree in writing for such Design ID for each of the next [***] Fiscal Months and (c) the Boundary Conditions applicable to the next [***] Fiscal Months.

3.4 Demand Forecast. Following receipt of a Monthly Planning Statement as contemplated by Section 3.3, the Purchaser shall deliver to Inotera a written non-binding forecast of the Purchaser's demand (each, a "**Demand Forecast**") for the [***] Fiscal Months (or such other period as may be agreed in writing by the Parties) covered by such Monthly Planning Statement. Each Demand Forecast (a) shall include the total number of Conforming Wafers (broken out by Design ID and Process Node) and Pre-Qual Engineering Wafers (broken out by Design ID and Process Node) requested by the Purchaser for the period covered by such Demand Forecast (broken out weekly) and (b) shall be consistent with the Committed Purchaser Manufacturing Capacity and Boundary Conditions set forth in the Monthly Planning Statement to which it relates.

3.5 Response to Forecast; Resolution of Conflicts. Following receipt of a Demand Forecast as contemplated by Section 3.4, Inotera shall deliver to the Purchaser a written response that, so long as such Demand Forecast delivered by the Purchaser was consistent with the Committed Purchaser Manufacturing Capacity and Boundary Conditions set forth in the Monthly Planning Statement to which it relates, indicates Inotera commits to supply Conforming Wafers and Pre-Qual Engineering Wafers based on such Demand Forecast (each, a "**Response to Forecast**"). In preparing any Response to Forecast at any time the Committed Purchaser Manufacturing Capacity is less than 100% of the Manufacturing Capacity of Inotera at the Inotera Fab, (a) if there is a conflict with respect to the manufacture of wafers for the Purchaser pursuant to this Agreement and the manufacture of wafers for [***] pursuant to the [***], such conflict shall be resolved [***] number of wafers to be manufactured for the [***], and (b) if there is a conflict with respect to the manufacture of wafers for the Purchaser pursuant to this Agreement and the manufacture of wafers or other products for any Person other than [***] pursuant to the [***], such conflict shall be resolved [***] and the manufacture of wafers for the [***].

3.6 Changes to Demand Forecast. The Purchaser may deliver to Inotera an adjusted Demand Forecast for any purpose, including to [***] of Conforming Wafers and Pre-Qual Engineering Wafers to be delivered to the Purchaser, to [***] of Conforming Wafers and Pre-Qual Engineering Wafers to be delivered to the Purchaser [***] and to [***] of Conforming Wafers and Pre-Qual Engineering Wafers to be manufactured [***], at any time until [***] prior to the [***] of the wafers affected by adjustments reflected in the adjusted Demand Forecast. In such event, Inotera shall deliver to the Purchaser a revised Response to Forecast that, so long as such adjustments are consistent with the Committed Purchaser Manufacturing Capacity and the Boundary Conditions set forth in the most recently delivered Monthly Planning Statement, indicates Inotera commits to supply Conforming Wafers and Pre-Qual Engineering Wafers based on such adjustments.

3.7 [***]. Notwithstanding anything herein to the contrary, if, for any particular Delivery Month, Inotera [***] to the Purchaser (at the Purchaser's request pursuant to a [***] delivered in the Fiscal Month prior to such Delivery Month) [***] for such Delivery Month set forth in the [***] delivered in the Fiscal Month prior to such Delivery Month, the [***] of Conforming Wafers delivered in such Delivery Month shall [***]. Any such "**[***]**" shall be calculated in accordance with Schedule 3.7.

3.8 [***].

(a) Notwithstanding anything herein to the contrary, if, at any time, Inotera reasonably expects to [***] as a result of manufacturing Conforming Wafers and Pre-Qual Engineering Wafers utilizing [***] for delivery to the Purchaser in a particular Delivery Month based on [***] of the Committed Purchaser Manufacturing Capacity for such [***] for such Delivery Month set forth in the most recently delivered Monthly Planning Statement, Inotera may deliver to the Purchaser a written notice (each, a "**[***] Notice**") setting forth the [***] Inotera reasonably believes it [***] the Purchaser in [***] and not cause a [***] (the [***] in its most recently delivered [***] set forth in a [***] Notice, the "**[***]**").

(b) Within [***] of receipt of a [***] Notice, the Purchaser may deliver to Inotera a written notice (a "**[***] Notice**") setting forth (i) the [***] to be [***] described in the [***] Notice that the Purchaser [***] in the applicable Delivery Month that are [***] of the [***] set forth in the applicable [***] Notice (such [***], the "**[***]**") and (ii) the Purchaser's [***] to Inotera the [***] with respect to the [***]. If the Purchaser delivers such a written notice, then the [***] with respect to the [***] shall be [***] of Conforming Wafers in the Delivery Month in which such [***] are delivered to the Purchaser.

(c) Notwithstanding anything herein to the contrary, if Inotera has delivered a [***] Notice with respect to a [***] for a particular Delivery Month, Inotera shall [***] the Purchaser in such Delivery Month the [***] as are set forth in such [***] Notice, as adjusted for the [***].

(d) For any Delivery Month after a Delivery Month for which the [***] for a [***] has been [***] of Conforming Wafers delivered to the Purchaser, Inotera shall [***] of Conforming Wafers [***] the Purchaser [***] to the [***] for such [***] until the [***] of Conforming Wafers [***] the Purchaser [***] the [***] for such [***] of Conforming Wafers [***] the Purchaser.

(e) "**[***]**" and "**[***]**" shall be calculated in accordance with Schedule 3.8.

3.9 [***] of Loading. If any Operational Report includes a notification described in Section 3.12(e) with respect to DRAM Products of a particular Design ID and, during the Quarterly Business Review in which such Operational Report is discussed, the Purchaser informs Inotera that the Purchaser is [***] to include in [***] of Conforming Wafers of DRAM Products of such Design ID to [***] for such Design ID, then the [***] of Conforming Wafers [***] the Purchaser in the Delivery Month next following the Delivery Month in which such Quarterly Business Review occurs shall [***] (the "**[***]**") [***] associated with such Design ID [***] included in the [***] for any [***] of such Design ID [***] by Micron or the Purchaser pursuant to Section [***] of such [***] that were or will be [***] during such [***]. Notwithstanding anything above to the contrary, DRAM Products that are manufactured utilizing [***] shall be deemed to be [***] for purposes of [***] described in this Section 3.9.

3.10 [***] Statements. At least [***], Inotera shall deliver to the Purchaser a statement setting forth the number of Conforming Wafers and Pre-Qual Engineering Wafers (in each case, by Design ID) that are anticipated to be delivered to the Purchaser during each of the next [***]. In addition, at least [***], Inotera shall deliver to the Purchaser a statement setting forth:

(a) by Design ID, the number of Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers that were delivered to the Purchaser in the immediately preceding [***];

(b) by Design ID, the Die Yield, Line Yield and Cycle Time in the immediately preceding [***]; and

(c) such other Performance Criteria as the Purchaser and Inotera may agree in writing.

3.11 Inotera Financial Report. Within [***] Business Days (or such other number of days as may be agreed in writing by the Parties) after the end of each Delivery Month, Inotera shall deliver to the Purchaser a report (each, a "**Inotera Financial Report**") which shall include:

(a) a detailed calculation, by Design ID, of [***] for the Delivery Month just ended;

(b) a detailed calculation of [***] for the Delivery Month just ended;

(c) if [***] for the Delivery Month just ended [***], a detailed calculation of [***] for such Delivery Month;

(d) if [***] for the Delivery Month just ended [***], a detailed calculation of [***] for such Delivery Month;

(e) if [***] for the Delivery Month just ended [***], a detailed calculation, by Process Node, of [***] for such Delivery Month;

(f) if [***] for the Delivery Month just ended [***], a detailed calculation, by Process Node, of [***] for such Delivery Month;

(g) if [***] for the Delivery Month just ended [***], a detailed calculation, by Design ID, of [***] for such Delivery Month;

(h) if [***] for the Delivery Month just ended [***], a detailed calculation, by Design ID, of [***] for such Delivery Month;

(i) if [***] in the Delivery Month just ended, a detailed calculation, by Design ID, of [***]; and

(j) other financial information regarding Inotera for the Delivery Month just ended, consistent with the financial information regarding Inotera that has been historically provided to Micron by Inotera.

The Purchaser will not use or disclose Inotera Financial Reports, or the contents thereof, received by the Purchaser in contravention of any Applicable Law.

3.12 Operational Report. Each Fiscal Quarter, Inotera shall deliver to the Purchaser a report with respect to the Fiscal Quarter just ended (the "**Operational Report**"), which shall include:

(a) a comparison of [***] relative to the [***] delivered in the [***] immediately prior to the [***], together with a comparison of [***] for the next [***] relative to the [***];

(b) a summary of [***], a summary of [***], including [***] and other indicators that may evidence or impact the [***], and a description of any [***];

(c) a description of [***] or other [***] from the Purchaser in [***], including any [***] or other indicator, summarized pursuant to Section 3.12(b);

(d) a description of [***] (and [***], if known) that are not reflected in [***] which may [***]; and

(e) a notification that, since the date of the last Operational Report, the [***] to include Conforming Wafers of a particular Design ID in [***] such that, during any [***] the aggregate [***] of such [***] reflected in [***] to be delivered by [***] the aggregate [***] of such [***] during such period, is [***]; *provided*, *however*, that, notwithstanding anything above to the contrary, DRAM Products that are manufactured [***] shall be [***] DRAM Products [***] described in [***].

3.13 Purchaser [***] Report. Each Fiscal Month, as soon as practicable, but no later than [***] days (or such other number of days as may be agreed in writing by the Parties) after the end of the Fiscal Month just ended, the Purchaser shall deliver to Inotera a report (each, a "**Purchaser [***] Report**"), which shall include (a) the [***] Conforming Wafers delivered in the then-current Fiscal Month and (b) [***] for the then-current Fiscal Month. The "**[***]**" for any Fiscal Month shall be calculated in accordance with Schedule 3.13. Inotera will not use or disclose the Purchaser [***] Reports, or the contents thereof, received by Inotera in contravention of any Applicable Law.

3.14 Periodic Performance Reviews.

(a) Inotera shall hold quarterly meetings (each, a "**Quarterly Business Review**") with the Purchaser, the primary purposes of which shall be to review and discuss the most recent Operational Report and the Performance Criteria and to mutually agree on operational adjustments if necessary.

(b) The Purchaser and Inotera shall hold monthly meetings (each, a "**Monthly Financial Review**") to review and discuss (i) at the election of the Purchaser, the Inotera Financial Reports received by the Purchaser since the last such meeting, and (ii) at the election of Inotera, the Purchaser [***] Reports delivered by the Purchaser since the last such meeting.

3.15 Long Range Forecast. Each Fiscal Year, the Purchaser will provide Inotera, for its review and comment, with a written non-binding forecast (each, a "**Long Range Forecast**") of the Purchaser's demand for Conforming Wafers for the next [***] or, if the Purchaser Wind-Down Period has commenced, for the remaining duration of the Purchaser Wind-Down Period.

3.16 Restrictions on Access to [***]; Nonsolicitation of Segregated Employees.

(a) Inotera shall prevent any Person that is not a Segregated Employee from obtaining access to the [***] (including the Purchaser [***] Reports and the Inotera Financial Reports), or the data from which [***] is derived from, delivered to, or created by, Inotera under this Agreement, except (i) as the Parties may otherwise agree in writing, (ii) as may be required by legal process under Applicable Law, and (iii) that Inotera may provide (A) the Purchaser with Inotera Financial Reports, Preliminary Price Notices, Pro Forma Invoices, Final Invoices and the data from which such Inotera Financial Reports, Preliminary Price Notices, Pro Forma Invoices or Final Invoices are derived, (B) any independent Third Party auditor acting as contemplated by Section 6.4 with such information as such auditor may request that is reasonably relevant to the applicable inspection and audit, and (C) Inotera's independent outside auditors with such information as such auditor may reasonably request in connection with its audit of Inotera's financial statements and other statutory audit requirements (the items in clauses (i), (ii) and (iii) being referred to as the "**Permitted Disclosures**"). Without limiting the generality of the foregoing, Inotera shall (x) develop, maintain, implement and enforce policies that (A) prohibit all Segregated Employees from disclosing, or allowing disclosure of, [***] (including the Purchaser [***] Reports and the Inotera Financial Reports) to Persons that are not Segregated Employees, other than the Permitted Disclosures and (B) require all Segregated Employees to store all physical files related to [***] (including the Purchaser [***] Reports and the Inotera Financial Reports) in secure locations that are not accessible by non-Segregated Employees, (y) segregate the office space of the Segregated Employees from other employees of Inotera, and (z) maintain all electronic files containing [***] (including the Purchaser [***] Reports and the Inotera Financial Reports) in confidential password protected files. The Purchaser shall not take any action that reasonably should be expected to cause Inotera to violate this Section 3.16.

(b) Even if permitted under Section 9.4 of the Joint Venture Agreement, the Purchaser shall not, and shall cause its Affiliates not to, directly or indirectly recruit, solicit or hire, or make arrangements to recruit, solicit or hire, any current or former Segregated Employee during the Restriction Period.

## ARTICLE 4
## PURCHASE AND SALE OF PRODUCTS

4.1 Product Quantity. The Purchaser shall purchase from Inotera all of the Conforming Wafers manufactured in response to the Purchaser's Demand Forecasts (including any adjusted Demand Forecast) in accordance with Article 3 and the Purchase Orders (including any revised or supplemented Purchase Order) accepted in accordance with this Article 4.

4.2 Non-Conforming Wafers. At the direction and option of the Purchaser, Inotera shall deliver to the Purchaser all Non-Conforming Wafers produced by Inotera (a) from wafers designated from Wafer Start for the Purchaser in accordance with Section 2.4 and (b) in the case of Shared Design ID Wafers, the portion thereof allocated to the Purchaser in accordance with Section 2.4.

4.3 Pre-Qual Engineering Wafers. Notwithstanding anything herein to the contrary, to the extent requested in any Purchase Order placed, or any change order to a Purchase Order issued, by the Purchaser, Inotera shall manufacture and deliver Pre-Qual Engineering Wafers in lieu of Conforming Wafers. Inotera shall promptly provide the Purchaser with full access to all data the Purchaser reasonably requests relating to Pre-Qual Engineering Wafers that are being manufactured by Inotera for the Purchaser.

4.4 Preliminary Price Notices; Placement of Purchase Orders.

(a) Prior to each Fiscal Month, Inotera shall deliver to the Purchaser a notice (each, a "**Preliminary Price Notice**"), which shall set forth the Preliminary Price for Conforming Wafers, the Preliminary Price for Pre-Qual Engineering Wafers and the Preliminary Price for Non-Conforming Wafers for such Fiscal Month. The Parties hereby acknowledge that Inotera has timely delivered to the Purchaser a Preliminary Price Notice for the Fiscal Month commencing on the Effective Date.

(b) Prior to each Fiscal Month, following receipt of the Preliminary Price Notice with respect to such Fiscal Month, the Purchaser shall place a non-cancelable blanket purchase order (each such order, a "**Purchase Order**") for the quantity, by Design ID, of Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers to be supplied to it by Inotera in the upcoming Fiscal Month. The Parties hereby acknowledge that the Purchaser has timely delivered to Inotera Purchase Orders for the Fiscal Month commencing on the Effective Date. The Purchaser may issue change orders to the Purchase Orders the Purchaser delivers to reflect changes in its Demand Forecasts in accordance with Article 3. The Purchaser may also elect to place with Inotera out-of-cycle Purchase Orders of Conforming Wafers, Pre-Qual Engineering Wafers or Non-Conforming Wafers on an as-needed basis. Any Purchase Order placed, or change order to a Purchase Order issued, hereunder shall be in writing and delivered via e-mail or facsimile transmission. The terms and conditions of this Agreement supersede the terms and conditions contained in any sales or purchase documentation provided in connection herewith unless expressly agreed otherwise in a writing signed by the Parties. Any Purchase Order for wafers may be placed in the name of the Purchaser, Micron or any other Affiliate of the Purchaser that is a direct or indirect wholly owned Subsidiary of Micron. If a Purchase Order for wafers is placed in a name of an Affiliate of the Purchaser, the Purchaser shall be jointly and severally liable with such Affiliate for any and all responsibilities and obligations under the Purchase Order.

4.5 Content of Purchase Orders. Each Purchase Order shall specify the following items:

(a) the Purchase Order number;

(b) the Design ID of each Conforming Wafer, Pre-Qual Engineering Wafer, Pre-Conforming Wafer and Non-Conforming Wafer;

(c) by Design ID, the forecasted quantity for the Fiscal Month of Conforming Wafers, Pre-Qual Engineering Wafers, Pre-Conforming Wafer and Non-Conforming Wafers;

(d) the Preliminary Price for each Conforming Wafer, the Preliminary Price for each Pre-Qual Engineering Wafer and the Preliminary Price for each Non-Conforming Wafer;

(e) the aggregate Preliminary Price for all Conforming Wafers ordered, the aggregate Preliminary Price for all Pre-Qual Engineering Wafers ordered and the aggregate Preliminary Price for all Non-Conforming Wafers ordered;

(f) special instructions for manufacturing Pre-Qual Engineering Wafers, if any; and

(g) other terms (if any).

Inotera shall not use or disclose the Purchaser Orders, or the contents thereof, received by Inotera in contravention of any Applicable Law.

4.6 Acceptance of Purchase Order. Each Purchase Order that (a) corresponds to the then most-recently delivered Response to Forecast (and any revised Response to Forecast) delivered in accordance with Article 3 and (b) is otherwise free of errors, shall be deemed accepted by Inotera upon receipt and shall be binding on Inotera and the Purchaser to the extent not inconsistent with the then most-recently delivered Response to Forecast (or revised Response to Forecast).

4.7 Output Shortfall; Excess Output.

(a) Inotera shall immediately notify the Purchaser in writing of any inability to meet a Purchase Order commitment to the Purchaser. In such an event, the Purchaser shall accept delivery of such lesser quantities Inotera is able to ship and issue to Inotera a revised Purchase Order to account for such shortfall.

(b) Inotera shall immediately notify the Purchaser in writing if the output to be purchased by the Purchaser under this Agreement will exceed, for any Design ID, the quantity of Conforming Wafers or Non-Conforming Wafers contained in the Purchaser's Purchase Order. In such an event, the Purchaser shall accept delivery of the additional quantities and issue to Inotera a supplementary Purchase Order to cover such excess.

4.8 Taxes.

(a) General. All sales, use and other transfer taxes imposed directly on or solely as a result of the supplying of Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers to the Purchaser and the payments therefor provided herein shall be stated separately on Inotera's Invoices, collected from the Purchaser and shall be remitted by Inotera to the appropriate tax authority ("**Recoverable Taxes**"), unless the Purchaser provides valid proof of

tax exemption prior to the effective date of the transfer of the Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers or otherwise as permitted by Applicable Law prior to the time Inotera is required to pay such taxes to the appropriate tax authority. When property is delivered and/or services are provided, or the benefit of services occurs, within jurisdictions in which collection of taxes from the Purchaser and remittance of taxes by Inotera is required by Applicable Law, Inotera shall have sole responsibility for payment of said taxes to the appropriate tax authorities. In the event such taxes are Recoverable Taxes and Inotera does not collect tax from the Purchaser, or pay such taxes to the appropriate governmental entity on a timely basis, and is subsequently audited by any tax authority, liability of the Purchaser shall be limited to the tax assessment for such Recoverable Taxes with no reimbursement for penalty or interest charges or other amounts incurred in connection therewith. Notwithstanding anything herein to the contrary, taxes other than Recoverable Taxes shall not be reimbursed by the Purchaser, and each of the Purchaser and Inotera is responsible for its own respective income taxes (including franchise and other taxes based on net income or a variation thereof), taxes based upon gross revenues or receipts and taxes with respect to general overhead, including business and occupation taxes, and such taxes shall not be Recoverable Taxes.

(b) Withholding Taxes. In the event that the Purchaser is prohibited by Applicable Law from making payments to Inotera unless the Purchaser deducts or withholds taxes therefrom and remits such taxes to the local taxing jurisdiction, then the Purchaser shall duly withhold and remit such taxes and shall pay to Inotera the remaining net amount after the taxes have been withheld. Such taxes shall not be Recoverable Taxes and the Purchaser shall not reimburse Inotera for the amount of such taxes withheld.

4.9 Invoicing; Payment.

(a) Along with each delivery of Conforming Wafers, Pre-Qual Engineering Wafers or Non-Conforming Wafers to the Purchaser, Inotera shall invoice the Purchaser for the aggregate Preliminary Price of the Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers contained in such delivery (a "**Pro Forma Invoice**").

(b) Within [***] Business Days (or such other number of days as may be agreed in writing by the Parties) after the end of each Delivery Month, Inotera shall issue to the Purchaser a final invoice (a "**Final Invoice**"), which shall include a debit equal to the Price True-Up Amount for such Delivery Month, if positive, and a credit equal to the Price True-Up Amount for such Delivery Month, if negative.

(c) Except as otherwise specified in this Agreement, (i) the Purchaser shall pay Inotera for the amounts due and owing by, and duly invoiced in a Pro Forma Invoice to, the Purchaser within [***] days following delivery to the Purchaser of the Final Invoice for the Delivery Month in which such Pro Forma Invoice was delivered or, if longer, within [***] days following the end of such Delivery Month and (ii) the Purchaser shall pay the Inotera for the amount due and owing by, and duly invoiced in a Final Invoice to, the Purchaser within [***] days following the delivery

to the Purchaser of such Final Invoice or, if later, within [***] days following the end of the Delivery Month covered thereby. All amounts owed under this Agreement are stated, calculated and shall be paid in United States Dollars.

(d) If the Purchaser does not pay Inotera for the amounts due under this Agreement, interest on the unpaid invoiced amounts will be calculated and imposed at the rate of [***] percent ([***]%) per annum, on a daily basis, from the due date until the payment is made, *provided* that, if the due date falls on a day that is not a Business Day, the payment shall be due by the next succeeding Business Day. However, if the Purchaser and Inotera do not agree on the payment amount of any Pro Forma Invoice or Final Invoice, interest on the disputed amount will not be imposed and accrued under this Agreement.

(e) In the event that the Purchaser reasonably disputes any Pro Forma Invoice or Final Invoice provided hereunder, the Purchaser and Inotera will each appoint an officer who will use their best efforts to resolve such dispute within [***] days following the date such dispute is raised by the Purchaser. If such officers are unable to resolve the dispute in the given [***] days, then the dispute shall be submitted to the respective presidents of the Purchaser and Inotera for resolution.

(f) If this Agreement has terminated or is terminating so that the Purchaser will not be able to use any credits issued by Inotera to the Purchaser, Inotera will promptly pay to the Purchaser an amount equal to such credits.

4.10 Payment to Subcontractors. Inotera shall be responsible for, and shall hold the Purchaser harmless from and against, any and all payments to the vendors or subcontractors Inotera utilizes in the performance of this Agreement.

4.11 Title; Risk of Loss. Title to, and risk of loss of, Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers shall pass to the Purchaser [***] according to Incoterms 2010, as amended, provided that Inotera will [***], and will assist the Purchaser in [***] of, the Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers in a manner consistent with past practices.

4.12 Packaging. All shipment packaging of the Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers shall be in conformance with the applicable Specifications, the Purchaser's reasonable instructions and general industry standards, and shall be resistant to damage that may occur during transportation. Marking on the packages shall be made by Inotera in accordance with the Purchaser's reasonable instructions.

4.13 Shipment. All Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers shall be prepared for shipment in a manner that: (a) follows good commercial practice; (b) is acceptable to common carriers for shipment at the lowest rate; and (c) is adequate to ensure safe arrival. Inotera shall mark all containers with (i) necessary lifting, handling and shipping information; (ii) Purchase Order number; (iii) date of shipment; and (iv) the name of the

Purchaser. If no instructions are given, Inotera shall select the most price effective carrier, given the time constraints known to Inotera. In no event shall Inotera be obligated to maintain any significant inventory for the Purchaser.

4.14 Customs Clearance. Upon the Purchaser's request, Inotera shall promptly provide the Purchaser with a statement of origin, and applicable customs documentation, for Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers wholly or partially manufactured outside of the country of import.

## ARTICLE 5
## PRICING

5.1 Price of Conforming Wafers.

(a) Price by Design ID. The "**Price**" of each Conforming Wafer of a particular Design ID in any particular Delivery Month shall be calculated in accordance with Schedule 5.1.

(b) Final Price. The "**Final Price**" of each Conforming Wafer of a particular Design ID in any particular Delivery Month shall equal [***].

5.2 Price of Pre-Qual Engineering Wafers. The price of each Pre-Qual Engineering Wafer delivered to the Purchaser during a Delivery Month shall be calculated in accordance with Schedule 5.2.

5.3 Price of Non-Conforming Wafers. Any Non-Conforming Wafers delivered to the Purchaser during a Delivery Month shall be [***].

## ARTICLE 6
## VISITATIONS; FACTORY REPRESENTATIVES; AUDITS

6.1 Visits. Inotera shall accommodate the Purchaser's reasonable requests for visits to the Inotera Fab and for meetings for the purpose of reviewing performance of production of Conforming Wafers, including requests for further information and assistance in troubleshooting performance issues.

6.2 Factory Representatives. At Micron's or the Purchaser's request, Inotera will designate at least one (1) of its employees with sufficient knowledge of and expertise in the operation of the Inotera Fab to interface with Micron and the Purchaser in a manner consistent with past practices. This employee will be the central point of contact for communication between Micron and the Purchaser, on the one hand, and Inotera, on the other hand, in regards to operational issues at the Inotera Fab arising out of the performance of this Agreement. Such employee will enter into such confidentiality agreement as Micron or the Purchaser may reasonably require.

6.3 Audit. The Purchaser's representatives and key customer representatives, upon the Purchaser's request, shall be allowed to visit the Inotera Fab during normal working hours upon reasonable advance written notice to Inotera for the purposes of monitoring production processes and compliance with any requirements set forth in this Agreement applicable to the supply to the Purchaser and the applicable Specifications. Upon completion of the audit, Inotera and the Purchaser shall agree to an audit closure plan, to be documented in the audit report issued by the Purchaser.

6.4 Financial Audit.

(a) Micron and the Purchaser reserve the right to have Inotera's books and records related to pricing of the Conforming Wafers (including each of the components of Final Price) and Pre-Qual Engineering Wafers purchased by the Purchaser during both the then current Fiscal Year and the prior Fiscal Year inspected and audited not more than [***] during any Fiscal Year to ensure compliance with Article 3 and Article 5. Such audit shall be performed, at the expense of Micron or the Purchaser, by an independent Third Party auditor acceptable to the Parties. Micron and the Purchaser shall provide [***] days advance written notice to Inotera of their desire to initiate an audit, and the audit shall be scheduled so that it does not adversely impact or interrupt Inotera's business operations. If the audit reveals any material discrepancies, the Purchaser or Inotera shall reimburse the other, as applicable, for any material discrepancies within [***] days after completion of the audit. The nature and extent of the discrepancies identified by the audit shall be reported to the Parties. Notwithstanding the foregoing, auditor reports shall not disclose pricing, or terms of purchase, for any purchases of materials or equipment by Inotera, absent written agreement from the respective legal counsel of the Parties. If any audit reveals a material discrepancy requiring a payment by Inotera, Micron and the Purchaser may increase the frequency of such audits to [***] for the [***].

(b) Inotera reserves the right to have the books and records of Micron and the Purchaser related to the Purchaser [***] Reports for both the then current Fiscal Year and the prior Fiscal Year inspected and audited not more than [***] during any Fiscal Year to ensure compliance with Article 5. Such audit shall be performed, at Inotera's expense, by an independent Third Party auditor acceptable to the Parties. Inotera shall provide [***] days advance written notice to Micron and the Purchaser of its desire to initiate an audit, and the audit shall be scheduled so that it does not adversely impact or interrupt the business operations of Micron or the Purchaser. If the audit reveals any material discrepancies, the Purchaser or Inotera shall reimburse the other, as applicable, for any material discrepancies within [***] days after completion of the audit. The nature and extent of the discrepancies identified by the audit shall be reported to the Parties. Notwithstanding the foregoing, auditor reports shall not disclose (i) [***] for any [***] by Micron or the Purchaser, (ii) the [***] of Micron or the Purchaser, or (iii) the [***] by Micron or the Purchaser, absent written agreement from the respective legal counsel of the Parties. If any audit reveals a material discrepancy requiring a payment by the Purchaser, Inotera may increase the frequency of such audits to [***] for the [***].

(c) Information regarding the pricing of the Conforming Wafers (including each of the components of Final Price) and Pre-Qual Engineering Wafers purchased by the Purchaser and the Purchaser [***] Reports as to which audit rights under this Section 6.4 have expired shall be deemed final and conclusive for all purposes (absent fraud or willful misconduct), except to the extent that (i) an audit with respect thereto has been commenced under this Section 6.4 prior to such expiration and (ii) the process under this Section 6.4 has not been fully completed with respect to such audit. The Parties acknowledge the possibility that an audit commenced pursuant to this Section 6.4 for the then current Fiscal Year and the prior Fiscal Year may not be completed prior to [***].

## ARTICLE 7
## WARRANTY; HAZARDOUS SUBSTANCES; DISCLAIMER

7.1 Warranties.

(a) Conforming Wafers. Inotera makes the following warranties to the Purchaser of Conforming Wafers hereunder regarding the Conforming Wafers furnished to the Purchaser hereunder, which warranties shall survive any delivery, inspection, acceptance, payment or resale of such Conforming Wafers:

(i) such Conforming Wafers conform to all applicable Specifications;

(ii) such Conforming Wafers are free from defects in materials and workmanship; and

(iii) Inotera has the necessary right, title and interest to such Conforming Wafers, and, upon the sale of such Conforming Wafers to the Purchaser, such Conforming Wafers shall be free of liens and encumbrances.

(b) Pre-Qual Engineering Wafers and Non-Conforming Wafers. ALL PRE-QUAL ENGINEERING WAFERS AND NON-CONFORMING WAFERS PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS," "WHERE IS" BASIS WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND.

7.2 Warranty Claims. Within a period of time, not to exceed the lesser of the actual warranty period applicable to the end customer for the DRAM Product at issue or [***] months from the date of the delivery of the Conforming Wafers at issue to the Purchaser, the Purchaser shall notify Inotera if it believes that any Conforming Wafer does not meet the warranty set forth in Section 7.1. The Purchaser shall return such Conforming Wafer (or DRAM Product therefrom) to Inotera as directed by Inotera. If a Conforming Wafer is determined not to be in compliance with such warranty, then the Purchaser shall be entitled to return such Conforming Wafer (or DRAM Product therefrom) and receive a credit (or, if this Agreement has terminated or is terminating so that it will not be able to use such credit, a refund) equal to ***the sum of*** **(a)** any monies paid to Inotera by the Purchaser in respect of such Conforming Wafer **plus (b)** any out-of-pocket charges for

shipping and handling reasonably incurred by the Purchaser in connection with such Conforming Wafer. THE FOREGOING REMEDY IS THE PURCHASER'S SOLE AND EXCLUSIVE REMEDY FOR INOTERA'S FAILURE TO MEET ANY WARRANTY OF SECTION 7.1.

7.3 Inspections. The Purchaser may, upon reasonable advance written notice, request samples of WIP designated to the Purchaser (whether individually as contemplated by Section 2.4(b) or together with others as contemplated by Section 2.4(a)) during production for purposes of determining compliance with the requirements and applicable Specification(s) hereunder, *provided* that the provision of such samples shall not materially impact Inotera's performance under the Manufacturing Plan or its ability to meet delivery requirements under any accepted Purchase Order. Any samples provided hereunder shall be: (a) limited in quantity to the amount reasonably necessary for the purposes hereunder; (b) invoiced and paid for in accordance with Section 4.9; and (c) included in any performance requirements. Inotera shall provide reasonable assistance for the safety and convenience of the Purchaser in obtaining the samples in such manner as shall not unreasonably hinder or delay Inotera's performance.

7.4 Hazardous Substances.

(a) If Conforming Wafers, Pre-Qual Engineering Wafers, Non-Conforming Wafers or DRAM Products provided hereunder include Hazardous Substances as determined in accordance with Applicable Law, Inotera shall ensure that its employees, agents and subcontractors actually working with such materials in providing the Conforming Wafers, Pre-Qual Engineering Wafers, Non-Conforming Wafers or DRAM Products hereunder to the Purchaser are trained in accordance with Applicable Law regarding the nature of, and hazards associated with, the handling, transportation and use of such Hazardous Substances.

(b) To the extent required by Applicable Law, Inotera shall provide the Purchaser with Material Safety Data Sheets (MSDS) either prior to or accompanying any delivery of Conforming Wafers, Pre-Qual Engineering Wafers, Non-Conforming Wafers or DRAM Products to the Purchaser.

(c) Inotera shall indemnify, defend and hold harmless the Purchaser from and against any and all Indemnified Losses suffered or incurred by the Purchaser based on, relating to, or arising under any Environmental Laws and related to the manufacture of Conforming Wafers, Pre-Qual Engineering Wafers, Non-Conforming Wafers or DRAM Products by Inotera.

7.5 Disclaimer. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS ARTICLE 7, INOTERA HEREBY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT OR OTHERWISE, WITH RESPECT TO THE CONFORMING WAFERS, PRE-QUAL ENGINEERING WAFERS, NON-CONFORMING WAFERS OR DRAM PRODUCTS PROVIDED UNDER THIS AGREEMENT. NO WARRANTIES SHALL APPLY TO ANY OF THE CONFORMING WAFERS, PRE-QUAL ENGINEERING WAFERS, NON-

CONFORMING WAFERS OR DRAM PRODUCTS THAT HAVE BEEN REPAIRED OR ALTERED, EXCEPT AS AUTHORIZED BY INOTERA, OR WHICH ARE SUBJECTED TO MISUSE, NEGLIGENCE, ACCIDENT OR ABUSE. NO WARRANTIES FOR CONFORMING WAFERS, PRE-QUAL ENGINEERING WAFERS, NON-CONFORMING WAFERS OR DRAM PRODUCTS DELIVERED BY INOTERA TO THE PURCHASER SHALL APPLY TO ANY WARRANTY CLAIM OR ISSUE OR DEFECT TO THE EXTENT CAUSED BY TECHNICAL MATERIALS PROVIDED OR SPECIFIED BY, THROUGH OR ON BEHALF OF THE PURCHASER, INCLUDING PRODUCT DESIGNS, TECHNOLOGY AND TEST PROGRAMS.

## ARTICLE 8
## CONFIDENTIALITY; OWNERSHIP

8.1 Protection and Use of Confidential Information. All information provided, disclosed or obtained by any Party in the performance of activities under this Agreement shall be subject to all applicable provisions of the Micron/Inotera Confidentiality Agreement. Furthermore, the terms and conditions of this Agreement shall be considered "Confidential Information" under the Micron/Inotera Confidentiality Agreement for which each Party is considered a "Receiving Party" under such agreement. To the extent there is a conflict between this Agreement and the Micron/Inotera Confidentiality Agreement, the terms of this Agreement shall control.

8.2 Masks for DRAM Products. Any masks used by Inotera to manufacture DRAM Products under this Agreement shall be based on DRAM Designs owned by Micron or its Affiliates and shall be treated as "Confidential Information" of Micron under the Micron/Inotera Confidentiality Agreement.

## ARTICLE 9
## INDEMNIFICATION

9.1 General Indemnity. Subject to Article 10:

(a) Inotera shall indemnify, defend and hold harmless the Purchaser Indemnified Parties from and against any and all Indemnified Losses based on, or attributable to, any Third Party Claim, or threatened Third Party Claim, resulting from the negligence, gross negligence or willful misconduct of Inotera or any of its respective officers, directors, employees, agents or subcontractors.

(b) the Purchaser shall indemnify, defend and hold harmless Inotera from and against any and all Indemnified Losses based on, or attributable to, any Third Party Claim, or threatened Third Party Claim, wherein the Third Party alleges that DRAM Products manufactured for and/or sold to the Purchaser by Inotera are infringing intellectual property rights of such Third Party.

9.2 Indemnification Procedures.

(a) Promptly after the receipt by any Purchaser Indemnified Party or Inotera (an "**Indemnified Party**") of a notice of any Third Party Claim that may be subject to indemnification under Section 9.1, such Indemnified Party shall give written notice of such Third Party Claim to the Party obligated to provide such indemnification under Section 9.1 (an "**Indemnifying Party**"), stating in reasonable detail the nature and basis of each allegation made in the Third Party Claim and the amount of potential Indemnified Losses with respect to each allegation, to the extent known, along with copies of the relevant documents received by the Indemnified Party evidencing the Third Party Claim and the basis for indemnification sought. Failure of the Indemnified Party to give such notice shall not relieve the Indemnifying Party from liability on account of this indemnification, except if, and only to the extent that, the Indemnifying Party is actually prejudiced by such failure or delay. Thereafter, the Indemnified Party shall deliver to the Indemnifying Party, promptly after the Indemnified Party's receipt thereof, copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Party Claim. The Indemnifying Party shall have the right to assume the defense of the Indemnified Party with respect to such Third Party Claim upon written notice to the Indemnified Party delivered within thirty (30) days after receipt of the particular notice from the Indemnified Party. So long as the Indemnifying Party has assumed the defense of the Third Party Claim in accordance herewith and notified the Indemnified Party in writing thereof, (i) the Indemnified Party may retain separate co-counsel, at its sole cost and expense, and participate in the defense of the Third Party Claim, it being understood that the Indemnifying Party shall pay all reasonable costs and expenses of counsel for the Indemnified Party after such time as the Indemnified Party has notified the Indemnifying Party of such Third Party Claim and prior to such time as the Indemnifying Party has notified the Indemnified Party that it has assumed the defense of such Third Party Claim, (ii) the Indemnified Party shall not consent to the entry of any judgment or enter into any settlement with respect to a Third Party Claim without the prior written consent of the Indemnifying Party (not to be unreasonably withheld, conditioned or delayed) and (iii) the Indemnifying Party shall not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim (other than a judgment or settlement that is solely for money damages and is accompanied by a release of all indemnifiable claims against the Indemnified Party) without the prior written consent of the Indemnified Party (not to be unreasonably withheld, conditioned or delayed).

(b) Equitable Remedies. In the case of any Third Party Claim where the Indemnifying Party reasonably believes that it would be appropriate to settle such Third Party Claim using equitable remedies (*i.e.*, remedies involving future activity of the Indemnified Party), the Indemnifying Party and the Indemnified Party shall work together in good faith to agree to a settlement; *provided*, *however*, that no Party shall be under any obligation to agree to any such settlement.

(c) Treatment of Indemnification Payments; Insurance Recoveries. Any indemnity payment under this Agreement shall be decreased by any amounts actually recovered by the Indemnified Party under Third Party insurance policies with respect to such Indemnified Losses (net of any premiums paid by such Indemnified Party under the relevant insurance policy). Each Party agrees (i) to use all reasonable efforts to recover all available insurance proceeds and (ii) to the extent that any indemnity payment under this Agreement has been paid by the Indemnifying Party to the Indemnified Party prior to the recovery by the Indemnified Party of such insurance proceeds, the amount of such insurance proceeds actually recovered by the Indemnified Party shall be promptly paid to the Indemnifying Party.

(d) Certain Additional Procedures. The Indemnified Party shall cooperate and assist the Indemnifying Party in determining the validity of any Third Party Claim and in otherwise resolving such matters. The Indemnified Party shall cooperate in the defense by the Indemnifying Party of each Third Party Claim (and the Indemnified Party and the Indemnifying Party agree with respect to all such Third Party Claims that a common interest privilege agreement exists between them), including: (i) permitting the Indemnifying Party to discuss the Third Party Claim with such officers, employees, consultants and representatives of the Indemnified Party as the Indemnifying Party reasonably requests; (ii) providing to the Indemnifying Party copies of documents and samples of products as the Indemnifying Party reasonably requests in connection with defending such Third Party Claim; (iii) preserving all properties, books, records, papers, documents, plans, drawings, electronic mail and databases of the Indemnifying Party and relating to matters pertinent to the conduct of the Indemnifying Party under the Indemnified Party's custody or control in accordance with such Party's corporate documents retention policies, or longer to the extent reasonably requested by the Indemnifying Party; (iv) notifying the Indemnifying Party promptly of receipt by the Indemnified Party of any subpoena or other Third Party request for documents or interviews and testimony; (v) providing to the Indemnifying Party copies of any documents produced by the Indemnified Party in response to or compliance with any subpoena or other Third Party request for documents; and (vi) except to the extent inconsistent with the Indemnified Party's obligations under Applicable Law and except to the extent that to do so would subject the Indemnified Party or its employees, agents or representatives to criminal or civil sanctions, unless ordered by a court to do otherwise, not producing documents to a Third Party until the Indemnifying Party has been provided a reasonable opportunity to review, copy and assert privileges covering such documents.

## ARTICLE 10
## LIMITATION OF LIABILITY

10.1 Damages Limitation. SUBJECT TO SECTION 10.2, IN NO EVENT SHALL ANY PARTY BE LIABLE TO ANOTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER INDIRECT DAMAGES OR ANY PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

10.2 Exclusions. Section 10.1 shall not apply to Section 7.4(c) or to any Party's breach of Article 8.

10.3 Mitigation. Each Party shall have a duty to use commercially reasonable efforts to mitigate damages for which another Party is responsible.

## ARTICLE 11
## TERM AND TERMINATION; SUPPLY OBLIGATIONS FOLLOWING TRIGGERING EVENT

11.1 Term.

(a) General. The term of this Agreement (the **"Term**") shall commence on the Effective Date and continue in effect until the third anniversary of the Effective Date, subject to potential successive one (1)-year extensions as contemplated below.

(b) Annual Process for One-Year Extension. During the month that is twenty-six (26) months prior to the end of the Term then in effect, officers appointed by the Parties shall hold one (1) or more meetings to discuss in good faith the potential extension of the Term by one (1) year, with such amendments to pricing and other terms as the Parties may mutually agree in writing. If by the first day of the month that is twenty-five (25) months prior to the end of the Term then in effect the Parties have not mutually agreed in writing to extend the Term by one (1) year, the matter shall be escalated to the president of Micron, acting on behalf of Micron and the Purchaser, and a designee of the Board of Directors of Inotera, acting on behalf of Inotera, who shall hold one (1) or more meetings to discuss in good faith the potential extension of the Term by one (1) year. The meetings contemplated by this Section 11.1(b) shall be held on dates and by means, including remote communications, as agreed by the Parties. For the avoidance of doubt, Micron and the Purchaser may condition their agreement to any extension upon the adoption by the Board of Directors of Inotera of a Business Plan acceptable to Micron and the Purchaser covering the remaining Term as it would be extended by such agreement.

(c) Purchaser Wind-Down Period. If by the first day of the month that is twenty-four (24) months prior to the end of the Term then in effect (or such other date as may be agreed in writing by the Parties) the Parties have not mutually agreed in writing to extend the Term by one (1) year, the Term shall not be extended and, commencing on the last day of the Term there shall begin a three (3)-year wind-down period (the "**Purchaser Wind-Down Period**") during which, on the pricing and other terms, and subject to the conditions, applicable under this Agreement immediately prior to the end of the Term, Inotera will supply to the Purchaser, and the Purchaser will purchase from Inotera, Conforming Wafers, Pre-Qual Engineering Wafers and Non-Conforming Wafers, except that the Committed Purchaser Manufacturing Capacity shall be modified as set forth in Sections 11.1(d) and 11.1(e).

(d) [***] Reductions in Aggregate Committed Purchaser Manufacturing Capacity During the Purchaser Wind-Down Period.

(i) During the [***] of the Purchaser Wind-Down Period, annualized aggregate Committed Purchaser Manufacturing Capacity across all Process Nodes installed at Inotera shall equal [***] percent ([***]%) of Inotera's annualized aggregate Manufacturing Capacity across all Process Nodes that exists at the end of the Term (determined by annualizing the aggregate monthly Manufacturing Capacity across all Process Nodes installed at Inotera for the final Delivery Month of the Term).

(ii) During the [***] of the Purchaser Wind-Down Period, annualized aggregate Committed Purchaser Manufacturing Capacity across all Process Nodes installed at Inotera shall equal a percentage of the annualized aggregate Committed Purchaser Manufacturing Capacity across all Process Nodes that exists at the end of the [***] of the Purchaser Wind-Down Period (determined by annualizing the aggregate monthly Committed Purchaser Manufacturing Capacity across all Process Nodes installed at Inotera for the final Delivery Month of the [***] of the Purchaser Wind-Down Period) selected by Inotera, which percentage shall be (A) equal to or less than [***] ([***]%) and (B) equal to or greater than [***] percent ([***]%) (*provided* that, if Inotera does not notify Micron and the Purchaser in writing of its selection at least [***] prior to the commencement of the [***] of the Purchaser Wind-Down Period, such percentage shall be [***] percent ([***]%)).

(iii) During the [***] of the Purchaser Wind-Down Period, annualized aggregate Committed Purchaser Manufacturing Capacity across all Process Nodes installed at Inotera shall equal a percentage of the annualized aggregate Committed Purchaser Manufacturing Capacity across all Process Nodes that exists at the end of the [***] of the Purchaser Wind-Down Period (determined by annualizing the aggregate monthly Committed Purchaser Manufacturing Capacity across all Process Nodes installed at Inotera for the final Delivery Month of the [***] of the Purchaser Wind-Down Period) selected by Inotera, which percentage shall be (A) equal to or less than [***] ([***]%) and (B) equal to or greater than [***] percent ([***]%) (*provided* that, if Inotera does not notify Micron and the Purchaser in writing of its selection at least [***] prior to the commencement of the [***] of the Purchaser Wind-Down Period, such percentage shall be [***] percent ([***]%)).

(e) Process Node Allocation of Aggregate Committed Purchaser Manufacturing Capacity During the Purchaser Wind-Down Period. Not later than [***] prior to the commencement of [***] of the Purchaser Wind-Down Period, the Purchaser shall provide a written notice (the "**Process Node Allocation Notice**") to Inotera specifying, by Process Node, the quantity of Conforming Wafers Inotera will be required to manufacture utilizing such Process Nodes pursuant to this Agreement during such [***]; *provided* that (i) the quantity of Conforming Wafers for a particular Process Node may not exceed the aggregate Manufacturing Capacity of such Process Node for such [***] as specified in the Monthly Planning Statement delivered by Inotera immediately prior to the delivery of such Process Node Allocation Notice and (ii) the aggregate

quantity of Conforming Wafers specified for all Process Nodes shall be equal to the aggregate Committed Purchaser Manufacturing Capacity for such [***], as determined in accordance with Section 11.1(d). During [***] of the Purchaser Wind-Down Period, Inotera shall manufacture quantities of Conforming Wafers (or, if required pursuant to Section 4.3, Pre-Qual Engineering Wafers ordered in lieu thereof) in accordance with the applicable Process Node Allocation Notice, as such quantities may be modified pursuant to the terms of this Agreement.

11.2 Termination.

(a) Except as otherwise provided in this Section 11.2, this Agreement may not be terminated by any Party during either the Term or the Purchaser Wind-Down Period.

(b) Notwithstanding anything herein to the contrary, upon the occurrence of an [***] (as defined in the Joint Venture Agreement), if [***] (as defined in the Joint Venture Agreement) within [***] (or such other period as the Purchaser may agree in writing) following the [***] and [***] shall have the right to terminate this Agreement effective upon written notice to [***], *provided* that [***].

(c) Any [***] shall contemplate the [***] to ensure that: (i) Inotera has the ability to [***] (the "**[***]**") by June 1, 2013 and (ii) Inotera has the ability to [***] the Applicable [***] Target [***] (the "**[***]**") by the Applicable [***] Deadline. Notwithstanding anything herein to the contrary, if at any time the [***] is not reflected in [***] or it becomes reasonably apparent that the [***] by July 1, 2013 or the [***] by the Applicable [***] Deadline, Micron and the Purchaser shall have the right, which they may exercise by written notice to Inotera, to (A) terminate this Agreement or (B) terminate the Purchaser's [***], which right shall survive the termination of such obligation; *provided*, *however*, that (I) the right of Micron and the Purchaser under this Section 11.2(c) as it relates to the [***] shall terminate if not exercised by written notice to Inotera prior to the earlier of (x) [***] and (y) the date on which the [***] occurs and (II) the right of Micron and the Purchaser under this Section 11.2(c) as it relates to the [***] shall terminate if not exercised by written notice to Inotera prior to the earlier of (x) the date that is [***] following the occurrence of the Applicable [***] Deadline and (y) the date on which the [***] occurs. Any written notice delivered by Micron and the Purchaser to Inotera pursuant to this Section 11.2(c) shall specify whether Micron and the Purchaser are exercising the termination right contemplated by clause (A) above or the termination right contemplated by clause (B) above and when such termination shall become effective.

(d) Notwithstanding anything herein to the contrary, Micron and the Purchaser shall have the right to terminate this Agreement, effective upon written notice to Inotera, in the event that: (i) Inotera files a petition under or otherwise seeks to take advantage of laws relating to bankruptcy, insolvency, suspension of payments, reorganization or rehabilitation, or makes a general assignment for the benefit of creditors, or otherwise acknowledges in writing insolvency, or is declared or adjudicated bankrupt or insolvent; (ii) Inotera commences a process of dissolution, liquidation or winding up; (iii) Inotera applies for or consents to the appointment of a trustee,

receiver, administrator, custodian, liquidator or the like for itself or any substantial portion of its business or assets; or (iv) Inotera or any substantial portion of its business or assets involuntarily becomes the subject of any such filing, process or appointment and such involuntary filing, process or appointment is not stayed, rescinded, removed or otherwise eliminated within sixty (60) days.

(e) Notwithstanding anything herein to the contrary, this Agreement may be terminated:

(i) by Inotera, effective upon written notice to Micron and the Purchaser, if there has been a material breach by Micron or the Purchaser of any material covenant or agreement contained in this Agreement and such breach has not been (A) cured by Micron or the Purchaser within thirty (30) days after written notice thereof from Inotera or (B) waived by Inotera; or

(ii) by Micron and the Purchaser, effective upon written notice to Inotera, if there has been a material breach by Inotera of any material covenant or agreement contained in this Agreement and such breach has not been (A) cured by Inotera within thirty (30) days after written notice thereof from Micron and the Purchaser or (B) waived by Micron and the Purchaser.

11.3 Inotera Requirements at Termination. Within [***] days after (x) the end of the Purchaser Wind-Down Period or (y) the effectiveness of any termination of this Agreement pursuant to Section 11.2, Inotera:

(a) shall deliver to Micron, or, pursuant to written instructions of Micron, destroy, all production masks obtained as contemplated by Section 2.3; and

(b) shall (i) deliver to Micron, or, pursuant to written instructions of Micron, destroy, all copies and other embodiments of any process technology or information provided to Inotera by Micron or its Affiliates, or any portion thereof, in whatever form received, reproduced or stored, (ii) if destruction is requested by Micron, certify to Micron and the Purchaser that such destruction is complete, and (iii) cease all use of the process technology or information provided to Inotera by Micron or its Affiliates.

11.4 Survival. Termination of this Agreement shall not affect any of the Parties' respective rights accrued, or obligations owed, before such termination, including any rights or obligations of the Parties in respect of any accepted Purchase Orders existing at the time of such termination. In addition, the following shall survive termination of this Agreement for any reason: Sections 2.7, 3.11, 3.13, 4.2, 4.5, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 6.4, 7.1, 7.2, 7.4(c) and 7.5, and Articles 5, 8, 9, 10, 11 and 12.

## ARTICLE 12
## MISCELLANEOUS

12.1 Force Majeure Events. The Parties shall be excused from any failure to perform any obligation hereunder to the extent such failure is caused by a Force Majeure Event. A Force Majeure Event shall operate to excuse a failure to perform an obligation hereunder only for the period of time during which the Force Majeure Event renders performance impossible or infeasible and only if the Party asserting Force Majeure as an excuse for its failure to perform has provided written notice to, in the event of an assertion by Micron or the Purchaser, Inotera and, in the event of an assertion by Inotera, Micron and the Purchaser specifying the obligation to be excused and describing the events or conditions constituting the Force Majeure Event.

12.2 Specific Performance. The Parties agree that irreparable damage will result if this Agreement is not performed in accordance with its terms, and the Parties agree that any damages available under the indemnification provisions or at law for a breach of this Agreement would not be an adequate remedy. Therefore, the provisions hereof and the obligations of the Parties hereunder shall be enforceable in a court of equity, or other tribunal with jurisdiction, by a decree of specific performance, and appropriate injunctive relief may be applied for and granted in connection therewith.

12.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto; *provided*, *however*, neither this Agreement nor any right or obligation hereunder may be assigned or delegated by any Party in whole or in part to any other Person without the prior written consent of the nonassigning Parties. Any purported assignment in violation of the provisions of this Section 12.3 shall be null and void and have no effect.

12.4 Compliance with Laws and Regulations. Each of the Parties shall comply with, and shall use reasonable efforts to require that its respective subcontractors comply with, Applicable Laws relating to this Agreement and the performance of such Party's obligations hereunder.

12.5 Notice. All notices and other communications hereunder shall be in writing and shall be deemed given upon (a) transmitter's confirmation of a receipt of a facsimile transmission, (b) confirmation of delivery by a standard overnight or recognized international carrier, or (c) delivery in person, addressed at the following addresses (or at such other address for a Party as shall be specified by like notice):

In the case of Micron:

Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attn: General Counsel
Facsimile: (208) 368-1309

In the case of the Purchaser:

Micron Semiconductor Asia Pte. Ltd.
c/o Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attn: General Counsel
Facsimile: (208) 368-1309

In the case of Inotera:

Inotera Memories, Inc.
667, Fuhsing 3rd Road
Hwa-Ya Technology Park
Kueishan, Taoyuan
Taiwan, R.O.C.
Attn: Head of Legal & IP Office
Facsimile: 886-3-327-2988 Ext. 3385

12.6 Waiver. The failure at any time of a Party to require performance by another Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by another Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

12.7 Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force and effect in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Laws or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties shall negotiate in good faith

appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

12.8 Third Party Rights. Except as expressly provided in Article 9, nothing in this Agreement, whether express or implied, is intended, or shall be construed, to confer, directly or indirectly, upon or give to any Person, other than the Parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

12.9 Amendment. This Agreement may not be modified or amended except by a written instrument executed by, or on behalf of, each of the Parties.

12.10 Entire Agreement. This Agreement, together with the agreements and instruments expressly provided for herein (including the Micron/Inotera Confidentiality Agreement), constitute the entire agreement of the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, among the Parties with respect to the subject matter hereof.

12.11 Choice of Law. This Agreement shall be governed by and construed in accordance with the laws of the R.O.C., without giving effect to its conflict of laws principles.

12.12 Jurisdiction; Venue. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be brought in the Taipei District Court, located in Taipei, Taiwan, and each of the Parties hereby consents and submits to the exclusive jurisdiction of such court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

12.13 Headings. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

12.14 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12.15 Insurance. Without limiting or qualifying Inotera's liabilities, obligations or indemnities otherwise assumed by Inotera pursuant to this Agreement, Inotera shall at all times (except as otherwise stipulated in Schedule 12.15), for so long as this Agreement remains in effect (and notwithstanding any termination of the Joint Venture Agreement), maintain in effect insurance of the types and in the amounts set forth on Schedule 12.15 or as otherwise agreed by the Parties from time to time. Such insurance coverage may be provided through the coverage under one or more insurance policies maintained by Micron, NTC or any of their respective Affiliates.

12.16 Micron Undertaking. Micron shall unconditionally cause the Purchaser to perform its obligations under this Agreement and hereby unconditionally guarantees the due performance of all such obligations by the Purchaser, including the payment of any amounts owing by the Purchaser under this Agreement. Such guarantee is an independent obligation of Micron and upon any default by the Purchaser in the performance of its obligations, including the payment of any amounts owing by the Purchaser, under this Agreement, Inotera may immediately proceed against Micron without proceeding against the Purchaser or joining the Purchaser.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement has been duly executed by, and on behalf of, the Parties as of the Closing Date.

MICRON TECHNOLOGY, INC.

By: /s/ D. Mark Durcan

Name: D. Mark Durcan

Title: Chief Executive Officer

**THIS IS A SIGNATURE PAGE FOR THE SUPPLY AGREEMENT ENTERED INTO BY AND AMONG MICRON, THE PURCHASER AND INOTERA**

**CONFIDENTIAL**

MICRON SEMICONDUCTOR ASIA PTE. LTD.

By: /s/ Brian John Shields

Name: Brian John Shields

Title: Senior Managing Director and Chairman of the Board of Directors

**THIS IS A SIGNATURE PAGE FOR THE SUPPLY AGREEMENT ENTERED INTO BY AND AMONG MICRON, THE PURCHASER AND INOTERA**

**[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT**

**CONFIDENTIAL**

INOTERA MEMORIES, INC.

By: /s/ Pei-Ing Lee

Name: Pei-Ing Lee
Title: Supervisor

**THIS IS A SIGNATURE PAGE FOR THE SUPPLY AGREEMENT ENTERED INTO BY AND AMONG MICRON, THE PURCHASER AND INOTERA**

**EXHIBIT 10.123**

**[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT**

**CONFIDENTIAL**

# JOINT VENTURE AGREEMENT

This JOINT VENTURE AGREEMENT, dated this 17th day of January, 2013, is made and entered into by and among MICRON SEMICONDUCTOR B.V., a private limited liability company organized under the laws of the Netherlands ("**MNL**"), NUMONYX HOLDINGS B.V., a private limited liability company organized under the laws of the Netherlands ("**Numonyx B.V.**"), Micron Technology Asia Pacific, Inc., an Idaho corporation ("**MTAP**"), and NANYA TECHNOLOGY CORPORATION (Nany Technology Corporation [Translation from Chinese]), a company incorporated under the laws of the Republic of China ("**ROC**" or "**Taiwan**") ("**NTC**"). MNL, Numonyx B.V., MTAP and NTC are each referred to individually as a "**JV Party**," and collectively as the "**JV Parties**".

## RECITALS

A. NTC and Infineon Technologies AG, a company incorporated under the laws of Germany ("**Infineon**"), have previously formed Inotera Memories, Inc. (Inotera Memories, Inc. [Translation from Chinese]), a company incorporated under the laws of the ROC ("**Inotera**").

B. Infineon subsequently assigned to Qimonda AG, a company incorporated under the laws of Germany ("**Qimonda**"), all of Infineon's Shares.

C. In accordance with that certain Share Purchase Agreement, dated October 11, 2008 (the "**Qimonda/MNL Share Purchase Agreement**"), by and among Micron Technology, Inc., a Delaware corporation ("**Micron**"), MNL, Qimonda and Qimonda Holding B.V., a private limited company organized under the laws of the Netherlands ("**Qimonda B.V.**"), MNL acquired from Qimonda and Qimonda B.V. Shares.

D. Subsequently, MNL Transferred to Numonyx B.V. certain Shares.

E. MNL and NTC previously entered into that certain Joint Venture Agreement, dated November 26, 2008, and amended and restated as of January 11, 2010 and as of March **[__]**, 2011 (the "**Original Joint Venture Agreement**"), to set forth certain agreements regarding the ownership, governance and operation of Inotera.

F. The JV Parties now desire to replace the Original Joint Venture Agreement with this Agreement.

G. Contemporaneous with the execution of this Agreement, Nan Ya Plastics is becoming a Joinder Party by entering into a Joinder Agreement with the JV Parties and Micron, and from time to time after the Closing Participating Affiliates and Participating Investors may become Joinder Parties, each by executing, delivering and entering into another Joinder Agreement with each of the JV Parties and Micron.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

## ARTICLE 1

## DEFINITIONS; INTERPRETATION

Section 1.1 Definitions. In addition to the terms defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the respective meanings set forth below:

"**[***] Subscription Shares**" means the Shares, if any, issued to NTC and the Joinder Parties pursuant to the terms and conditions of Section 2(a) of that certain New Finance Agreement entered into on the date hereof by and among Micron, MNL, Numonyx B.V., MSA, MTAP, Inotera and Nan Ya Plastics, to the extent such Shares are not purchased by MNL, Numonyx B.V. or MTAP as a result of a properly-exercised Partial Purchase Election.

"**Accountants**" shall have the meaning set forth in Section 10.2(c)(ii) of this Agreement.

"**Affiliate**" means, with respect to any specified Person, any other Person that directly or indirectly, including through one or more intermediaries, Controls, or is Controlled by, or is under common Control with such specified Person; and the term "**affiliated**" has a meaning correlative to the foregoing.

"**Agreement**" means this Joint Venture Agreement.

"**Applicable Law**" means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"**Articles of Incorporation**" means the Articles of Incorporation of Inotera in the form and substance as Exhibit A attached to this Agreement, and as amended from time to time.

"**Automatic Exercise Date**" shall have the meaning set forth in Section 12.3(a) of this Agreement.

"**Blockage Condition**" shall have the meaning set forth in Section 12.3(a) of this Agreement.

"**Board of Directors**" means the board of directors of Inotera.

"**Board Switch Time**" shall have the meaning set forth in Section 5.1(b)(iii) of this Agreement.

"**Budget**" shall have the meaning set forth in Section 7.5(b) of this Agreement.

"**Business Day**" means a day that is not a Saturday, Sunday or other day on which commercial banking institutions in either the ROC or the State of New York are authorized or required by Applicable Law to be closed.

"**Business Plan**" shall have the meaning set forth in Section 7.5(a) of this Agreement.

"**Buyout Notice**" shall have the meaning set forth in Section 13.1(a) of this Agreement.

"**Buyout Original Price**" shall have the meaning set forth in Section 13.1(a) of this Agreement.

"**Buyout Price**" shall have the meaning set forth in Section 12.3(a) of this Agreement.

"**Buyout Shares**" shall have the meaning set forth in Section 13.1(a) of this Agreement.

"**Buyout Subsidiaries**" shall have the meaning set forth in Section 13.2 of this Agreement.

"**CFO**" shall have the meaning set forth in Section 5.4(b) of this Agreement.

"**Chairman**" means the Chairman of the Board of Directors.

"**Clean-up Option**" shall have the meaning set forth in Section 12.3(a) of this Agreement.

"**Competitively Sensitive Information**" means any information, in whatever form, that has not been made publicly available relating to products and services that Micron or a Subsidiary of Micron, on the one hand, and a Joinder Party or NTC or a Subsidiary of a Joinder Party or NTC, on the other hand, sells in competition with the other at the execution of this Agreement or thereafter, including DRAM Products, to the extent such information of the Person selling such products and services includes price or any element of price, customer terms or conditions of sale, seller-specific costs, volume of sales, output (but not including Inotera's output), bid terms of the foregoing type and such similar information as is specifically identified electronically or in writing to Inotera by Micron or a Subsidiary of Micron, on the one hand, and a Joinder Party or NTC or a Subsidiary of a Joinder Party or NTC, on the other hand, as competitively sensitive information.

"**Compliant JV Party**" shall have the meaning set forth in Section 13.1(a) of this Agreement.

"**Confidentiality Agreements**" shall have the meaning set forth in Section 15.13(a) of this Agreement.

"**Confidentiality Covenant**" shall have the meaning set forth in Section 15.13(a) of this Agreement.

"**Control**" means the power or authority, whether exercised or not, to direct the business, management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, which power or authority shall conclusively be presumed to exist upon possession of beneficial ownership or power to direct the vote of more than fifty percent (50%) of the votes entitled to be cast at a meeting of the members, shareholders or other equity holders of such Person or power to control the composition of a majority of the board of directors or like governing body of such Person; and the term "**Controlled**" has a meaning correlative to the foregoing.

"**Cure Period**" shall have the meaning set forth in Section 12.5 of this Agreement.

"**Deadlock**" shall have the meaning set forth in Section 12.1 of this Agreement.

"**Default Original Price**" shall have the meaning set forth in Section 12.6(a) of this Agreement.

"**Defaulting JV Parties**" shall have the meaning set forth in Section 12.4 of this Agreement.

"**Divestiture Action**" shall have the meaning set forth in Section 2.4(c)(v) of this Agreement.

"**DRAM Product**" means a Trench DRAM Product or Stack DRAM Product.

"**Employee Restriction Period**" means the period commencing on the date of this Agreement and ending on the [***] of the [***] of all of the [***] by (i) MNL, Numonyx B.V., MTAP and their respective Subsidiaries or (ii) NTC, the Joinder Parties and their respective Subsidiaries, in each case not in contravention of this Agreement.

"**Equity Interest**" means a JV Party's or Joinder Party's percentage ownership of the Shares as determined by dividing the number of Shares owned by such JV Party or Joinder Party at the time of determination by the total issued and outstanding Shares at the time of determination.

"**Event of Default**" shall have the meaning set forth in Section 12.4 of this Agreement.

"**Exercise Notice**" shall have the meaning set forth in Section 12.6(a) of this Agreement.

"**Fab Lease**" means that certain Amended and Restated Lease and License Agreement dated June 18, 2009, among NTC, Inotera and MeiYa.

"**Fair Value**" means (i) if the Shares are listed on the Taiwan Stock Exchange, aggregate volume weighted average trading price of the Shares for the [***] trading days ending on the Business Day immediately prior to the date of the Exercise Notice or the Buyout Notice, as applicable; or (ii) if the Shares are not then listed on the Taiwan Stock Exchange, the fair value of a Share as of the Business Day immediately prior to the date of the Exercise Notice or Buyout Notice, as applicable, as determined by independent appraisers selected as follows: each of MNL and NTC shall appoint one independent appraiser, which shall be an internationally recognized accounting, valuation or investment banking firm, and these two independent appraisers shall mutually select a third independent appraiser. Each such appraiser shall in good faith conduct its own independent appraisal to determine the fair value of the Shares (ignoring any applicable minority discounts or effects of illiquidity that may be associated with the Shares), and the average of the two (2) determinations that are the closest in value shall be the Fair Value of the Shares.

"**Filing**" shall have the meaning set forth in Section 2.4 of this Agreement.

"**Filing Event**" shall have the meaning set forth in Section 2.4 of this Agreement.

"**Fiscal Quarter**" means any of the four financial accounting quarters within the Fiscal Year.

"**Fiscal Year**" shall have the meaning set forth in Section 10.1 of this Agreement.

"**Full Purchase Election**" shall have the meaning set forth in Section 12.3(a) of this Agreement.

"**GAAP**" means generally accepted accounting principles, consistently applied for all periods at issue.

"**Governmental Entity**" means any governmental authority or entity, including any agency, board, bureau, commission, court, municipality, department, subdivision or instrumentality thereof, or any arbitrator or arbitration panel.

"**ICDR**" means the International Centre for Dispute Resolution of the American Arbitration Association.

"**Imaging Product**" means any (i) semiconductor device having a plurality of photo elements (e.g., photodiodes, photogates, etc.) for converting impinging light into an electrical representation of the information in the light, (ii) image processor or other semiconductor device for balancing, correcting, manipulating or otherwise processing such electrical representation of

the information in the impinging light, or (iii) combination of the devices described in clauses (i) and (ii).

"**Infineon**" shall have the meaning set forth in the Recitals of this Agreement.

"**Inotera**" shall have the meaning set forth in the Recitals to this Agreement.

"**Inotera Reportable Events**" shall have the meaning set forth in Section 10.4 of this Agreement.

"**Inspection Right**" shall have the meaning set forth in Section 10.2(a) of this Agreement.

"**Joinder Agreement**" means each of (i) the Joinder Agreement (as amended from time to time) entered into by Nan Ya Plastics, each of the JV Parties and Micron as of the date of this Agreement and (ii) each of the other Joinder Agreements (as amended from time to time) that have been duly executed, delivered and entered into by a Participating Affiliate or a Participating Investor with each of the JV Parties and Micron, in substantially the form of the Joinder Agreement described in the foregoing clause (i).

"**Joinder Party**" means (i) Nan Ya Plastics, (ii) each Participating Affiliate that is a party to a Joinder Agreement and (iii) each Participating Investor that is a party to a Joinder Agreement.

"**Joint Venture Documents**" means the documents identified on Schedule A to this Agreement, as such documents may be amended from time-to-time by the parties thereto.

"**JV Party**" shall have the meaning set forth in the preamble to this Agreement.

"**Manufacturing Plan**" shall have the meaning set forth in Section 7.2 of this Agreement.

"**Master Agreement**" means that certain Master Agreement, dated as of the date hereof, among Micron, MNL, Numonyx B.V., MSA, MTAP, NTC and Inotera (as amended from time to time).

"**MeiYa**" means MeiYa Technology Corporation, a company incorporated under the laws of the ROC.

"**Micron**" shall have the meaning set forth in the Recitals to this Agreement.

"**Micron Assigned Employee Agreement**" means that certain Amended and Restated Micron Assigned Employee Agreement dated as of August 24, 2012, between Micron and Inotera.

"**Micron Competitor**" means a manufacturer, developer or vendor of DRAM Products, Imaging Products, NAND Flash Memory Products or NOR Flash Memory Products, or a developer of process technology used in the manufacture of any of the foregoing.

"Micron Parties" shall have the meaning set forth in Section 9.3(a) of this Agreement.

"Micron Supply Agreement" means that certain Supply Agreement dated as of the date hereof, among Micron, MSA, and Inotera, as amended from time to time.

"MNL" shall have the meaning set forth in the preamble to this Agreement.

"**MNL Director**" means a director of Inotera designated by MNL pursuant to Section 5.1(b)(i), 5.1(b)(ii) or 5.1(b)(iii).

"**MSA**" means Micron Semiconductor Asia Pte. Ltd., a private limited company organized under the laws of Singapore.

"**MTAP**" shall have the meaning set forth in the preamble to this Agreement.

"**Mutual Confidentiality Agreements**" shall have the meaning set forth in Section 15.13(a) of this Agreement.

"**Nan Ya Plastics**" means Nan Ya Plastics Corporation, a company incorporated under the laws of the ROC.

"**NAND Flash Memory Product**" means a non-volatile semiconductor memory device containing memory cells that are electrically programmable and electrically erasable whereby the memory cells consist of one or more transistors that have a floating gate, charge trapping regions or any other functionally equivalent structure utilizing one or more different charge levels (including binary or multi-level cell structures), with or without any on-chip control, I/O and other support circuitry, in wafer, die or packaged form.

"**NCPC**" means Nan Chung Petrochemical Corporation (Nan Chung Petrochemical Corpororation [Translation from Chinese]), a company incorporated under the laws of the ROC.

"**New Finance Agreement**" means that certain New Finance Agreement dated as of the date hereof, by and among Micron, MNL, Numonyx B.V., MSA, MTAP, Inotera and Nan Ya Plastics.

"**Non-compliant JV Party**" shall have the meaning set forth in Section 13.1(a) of this Agreement.

"**Non-Defaulting JV Parties**" shall have the meaning set forth in Section 12.4 of this Agreement.

"**NOR Flash Memory Products**" means a non-volatile semiconductor memory device, in die, wafer or packaged form, utilizing a hot carrier injection programming mechanism and one floating gate charge storage region per transistor whereby the memory array is arranged so that the drain of one memory cell is connected directly to a source line through at most one memory transistor.

"**Notice of Default**" shall have the meaning set forth in Section 12.5 of this Agreement.

"**NT$**" means the lawful currency of the ROC.

"**NTC**" shall have the meaning set forth in the preamble to this Agreement.

"**NTC Agreement**" shall have the meaning set forth in Section 7.3 of this Agreement.

"**NTC Competitor**" means a manufacturer, developer or vendor of DRAM Products, or a developer of process technology used in the manufacture of DRAM Products.

"**NTC Parties Share**" means the aggregate Equity Interests of NTC and the Joinder Parties.

"**NTC Parties**" shall have the meaning set forth in Section 9.3(a) of this Agreement.

"**NTC Supply Agreement**" means that certain Supply Agreement dated as of the date hereof, between NTC and Inotera, as the same may be amended from time-to-time.

"**Numonyx B.V.**" shall have the meaning set forth in the preamble to this Agreement.

"**Offered Shares**" shall have the meaning set forth in Section 9.3(a) of this Agreement.

"**Option Period**" shall have the meaning set forth in Section 9.3(b) of this Agreement.

"**Original Joint Venture Agreement**" shall have the meaning set forth in the Recitals to this Agreement.

"**Original Price**" shall have the meaning set forth in Section 12.3(a) of this Agreement.

"**Partial Purchase Election**" shall have the meaning set forth in Section 12.3(a) of this Agreement.

"**Participating Affiliate**" means any Affiliate of Nan Ya Plastics (other than NTC) that has duly executed, delivered and entered into a Joinder Agreement.

"**Participating Investor**" means any Person other than Nan Ya Plastics, NTC, Micron or any of their respective Affiliates that is reasonably acceptable to Micron and has duly executed, delivered and entered into a Joinder Agreement.

"**Permitted Transfer**" shall have the meaning set forth in Section 9.2 of this Agreement.

"**Person**" means any natural person, corporation, joint stock company, limited liability company, association, partnership, firm, joint venture, organization, business, trust, estate or any other entity or organization of any kind or character.

"**President**" shall have the meaning set forth in Section 5.4(a) of this Agreement.

"**Prohibited Employees**" shall have the meaning set forth in Section 8.4(a) of this Agreement.

"**Proposing JV Party**" shall have the meaning set forth in Section 12.3(a) of this Agreement.

"**Qimonda**" shall have the meaning set forth in the Recitals to this Agreement.

"**Qimonda B.V.**" shall have the meaning set forth in the Recitals to this Agreement.

"**Qimonda/MNL Share Purchase Agreement**" shall have the meaning set forth in the Recitals to this Agreement.

"**Restricted Employees**" shall have the meaning set forth in Section 8.4(a) of this Agreement.

"**Receiving Parties**" shall have the meaning set forth in Section 9.3(a) of this Agreement.

"**Receiving JV Party**" shall have the meaning set forth in Section 12.3(a) of this Agreement.

"**Regulatory Law**" shall have the meaning set forth in Section 2.4 of this Agreement.

"**Remainder Shares**" shall have the meaning set forth in Section 12.3(a) of this Agreement.

"**Restored Position**" shall have the meaning set forth in Section 11.5(b) of this Agreement.

"**ROC**" shall have the meaning set forth in the preamble to this Agreement.

"**ROC Company Law**" means the Company Law of the ROC, as amended.

"**Sale Offer**" shall have the meaning set forth in Section 9.3(a) of this Agreement.

"**Shareholders' Meeting**" or "**Shareholders' Meetings**" shall have the meaning set forth in Section 6.2 of this Agreement.

"**Shares**" means the ordinary shares of Inotera.

"**Stack DRAM**" means dynamic random access memory cell that functions by using a capacitor arrayed predominantly above the semiconductor substrate.

"**Stack DRAM Product**" means any memory comprising Stack DRAM, whether in die or wafer form.

"**[***]**" means any obligation under the New Finance Agreement.

"**Subsidiary**" means, with respect to any specified Person, any other Person that directly or indirectly, including through one or more intermediaries, is Controlled by such specified Person.

"**Suspension**" shall have the meaning set forth in Section 14.3 of this Agreement.

"**Taiwan**" shall have the meaning set forth in the preamble to this Agreement.

"**Taiwan GAAP**" means GAAP used in the ROC, as in effect from time to time, consistently applied for all periods at issue.

"**TDCC**" means the Taiwan Depository & Clearing Corporation.

"**Third Party**" means any Person other than NTC, the Joinder Parties, Micron, Inotera or any of their respective Subsidiaries.

"**Transfer**" shall have the meaning set forth in Section 9.1(a) of this Agreement.

"**Transfer Notice**" shall have the meaning set forth in Section 9.3(a) of this Agreement.

"**Transfer Period**" shall have the meaning set forth in Section 9.3(d) of this Agreement.

"**Transferor**" shall have the meaning set forth in Section 9.3(a) of this Agreement.

"**Trench Contract Process**" means the 90nm and 70nm trench based DRAM process technology previously transferred to Inotera under that certain Know How Transfer Agreement dated November 13, 2002, among NTC, Inotera and Qimonda, as amended.

"**Trench DRAM**" means a dynamic random access memory cell that functions employing a capacitor arrayed predominantly below the surface of the semiconductor substrate.

"**Trench DRAM Products**" means trench based dynamic random access memory products manufactured by Inotera in accordance with the Trench Contract Process.

"**TTLA**" means that certain Third Amended and Restated Technology Transfer and License Agreement dated as of the date hereof, by and between Micron and NTC.

"**[***]**" shall have the meaning set forth in Section 11.5(a) of this Agreement.

"**U.S. GAAP**" means GAAP used in the United States, as in effect from time to time.

"**Vice-Chairman**" means the Vice-Chairman of the Board of Directors.

"**Wafer Start**" means the initiation of manufacturing services with respect to a wafer.

"**Wholly-Owned Subsidiary**" of a Person means a Subsidiary, all of the shares of stock or other ownership interests of which are owned, directly or indirectly through one or more intermediaries, by such Person, other than a nominal number of shares or a nominal amount of other ownership interests issued in order to comply with requirements that such shares or interests be held by one or more other Persons, including requirements for directors' qualifying shares or interests, requirements to have or maintain two or more stockholders or equity owners or other similar requirements.

Section 1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (i) all references to Sections, Articles, Exhibits, Appendices or Schedules are to Sections, Articles, Exhibits, Appendices or Schedules of or to this Agreement, (ii) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with Taiwan GAAP, (iii) words in the singular include the plural and vice versa, (iv) the term "**including**" means "**including without limitation,**" and (v) the terms "**herein,**" "**hereof,**" "**hereunder**" and words of similar import shall mean references to this Agreement as a whole and not to any individual section or portion hereof. Unless otherwise denoted, all references to "**$**" or dollar amounts will be to lawful currency of the United States of America. All references to "**day**" or "**days**" mean calendar days.

(b) No provision of this Agreement will be interpreted in favor of, or against, any JV Party by reason of the extent to which (i) such JV Party or its counsel participated in the drafting thereof, or (ii) such provision is inconsistent with any prior draft of this Agreement or such provision.

## ARTICLE 2

## INOTERA

Section 2.1 General Matters.

(a) Name. Inotera is named (Inotera Memories, Inc. [Translation from Chinese]) in Chinese and "**Inotera Memories, Inc.**" in English. The JV Parties and the Joinder Parties acknowledge and agree to use best efforts to cause Inotera to be continued as a company-limited-by-shares under the laws of the ROC.

(b) Purpose. The JV Parties and the Joinder Parties shall use best efforts to cause the purpose of Inotera to be, (i) during the term of the Micron Supply Agreement, the manufacture and sale of certain Stack DRAM Products exclusively for and to Micron, Micron's Subsidiaries, and NTC and, (ii) after the term of the Micron Supply Agreement, the engagement in other lawful transactions not inconsistent with the terms of any contract or agreement with Micron or any Affiliate of Micron; and the entry of, or engagement in, any such lawful transactions or activities in furtherance of the foregoing purposes.

(c) Business Scope. Subject to amendment by the JV Parties from time to time and any necessary approval from the relevant Governmental Entities, the JV Parties and the Joinder Parties shall use best efforts to cause the registered business scope of Inotera to be as set forth in its business license, other incorporation documents and the Articles of Incorporation, all as mutually agreed upon by MNL and NTC.

(d) Principal Place of Business. The registered address and the principal place of business of Inotera is Hwa-Ya Technology Park, Taoyuan, Taiwan, ROC. The Board of Directors may change the registered address or the principal place of business of Inotera to such other place as the Board of Directors may from time to time determine. Inotera may maintain offices and places of business at such other place or places within or outside of Taiwan as the Board of Directors may deem to be advisable.

Section 2.2 Articles of Incorporation. In case of any conflict or inconsistency between the provisions of the Articles of Incorporation and the terms of this Agreement, the terms of this Agreement shall prevail as among the JV Parties and the Joinder Parties to the extent permitted under the Applicable Laws. To the extent permissible under the Applicable Laws, the JV Parties and the Joinder Parties shall exercise all rights available to them to give effect to the terms of this Agreement and to take such reasonable steps to amend the Articles of Incorporation at the next Shareholders' Meeting to the extent necessary to remove any such conflict or inconsistency.

Section 2.3 Maintenance of Inotera. The JV Parties and the Joinder Parties shall use best efforts to cause the Board of Directors, or officers of Inotera, to make or cause to be made, from time to time, filings and applications to the relevant Governmental Entities in the ROC to amend any registration, license or permit of Inotera as the Board of Directors reasonably

considers necessary or appropriate under the Applicable Laws so as to ensure (a) the continuation of Inotera as a company-limited-by-shares under the laws of the ROC and (b) compliance with the terms of this Agreement.

Section 2.4 Governmental Approvals. In the event that any JV Party or any Joinder Party takes or desires to take any action contemplated by this Agreement that could reasonably be expected to result in an event or transaction, including the purchase by any JV Party or any Joinder Party of Shares pursuant to Section 9.3, 12.3, 12.6 or 13.1, which event or transaction, as to each of the foregoing, would require any JV Party or any Joinder Party to make a filing, notification or any other required or requested submission under antitrust, competition, foreign investment, company or fair trade law (any such event or transaction, a "**Filing Event**" and any such filing, notification, or any such other required or requested submission, a "**Filing**" and any such law, a "**Regulatory Law**"), then:

(a) the JV Party or Joinder Party taking such action, in addition to complying with any other applicable notice provisions under this Agreement, shall promptly notify the other JV Parties and Joinder Parties of such Filing Event, which notification shall include an indication that Filings under the Regulatory Law will be required;

(b) notwithstanding any provision to the contrary in this Agreement, a Filing Event may not occur or close until after any applicable waiting period (including any extension thereof) under the Regulatory Law, as applicable to such Filing Event, shall have expired or been terminated, and all approvals under regulatory Filings in any jurisdiction that shall be necessary for such Filing Event to occur or close shall have been obtained, and any applicable deadline for the occurrence or closing of such Filing Event contained in this Agreement shall be delayed, so long as all JV Parties and Joinder Parties are proceeding diligently in accordance with this Section 2.4 to seek any such expiration, termination or approval, and so long as there are no other outstanding conditions preventing the occurrence or closing of the Filing Event;

(c) the JV Parties and the Joinder Parties shall, and shall cause any of their relevant Affiliates to:

(i) as promptly as practicable, make their respective Filings under the applicable Regulatory Law;

(ii) promptly respond to any requests for additional information from the applicable Governmental Entity;

(iii) subject to applicable Regulatory Laws, use commercially reasonable efforts to cooperate with each other in the preparation of, and coordinate, such Filings (including the exchange of drafts between each party's outside counsel) so as to reduce the length of any review periods;

(iv) subject to applicable Regulatory Laws, cooperate and use their respective commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary under Regulatory Law in connection with such Filing Event, including using commercially reasonable efforts to provide information, obtain necessary exemptions, rulings, consents, clearances, authorizations, approvals and waivers, and effect necessary registrations and filings;

(v) subject to applicable Regulatory Laws, use their commercially reasonable efforts to (a) take actions that are necessary to prevent the applicable Governmental Entity from filing an action with a court or Governmental Entity that, if the Governmental Entity prevailed, would restrict, enjoin, prohibit or otherwise prevent or materially delay the consummation of the Filing Event, including an action by any such Governmental Entity seeking a requirement to (i) sell, license or otherwise dispose of, or hold separate and agree to sell or otherwise dispose of, assets, categories of assets or businesses of any JV Party, Joinder Party, Micron, Inotera, or any of their respective Subsidiaries; (ii) terminate existing relationships and contractual rights and obligations of any JV Party, Joinder Party, Micron, Inotera or any of their respective Subsidiaries; (iii) terminate any relevant joint venture or other arrangement; or (iv) effectuate any other change or restructuring of any JV Party, Joinder Party, Micron or Inotera (as to each of the foregoing, a "**Divestiture Action**"), and (b) contest and resist any action, including any legislative, administrative or judicial action, and to have vacated, lifted, reversed or overturned any order that restricts, enjoins, prohibits or otherwise prevents or materially delays the occurrence or closing of such Filing Event; and

(vi) subject to applicable Regulatory Laws, prior to the making or submission of any analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal by or on behalf of any JV Party or Joinder Party in connection with proceedings under or relating to the applicable Regulatory Law, consult and cooperate with each other, and consider in good faith the views of each other, in connection with any such analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals, and provide each other with copies of all material communications from and filings with, any Governmental Entities in connection with any Filing Event.

(d) Notwithstanding anything to the contrary in this Section 2.4, nothing in this Section 2.4 shall require any JV Party, Joinder Party or their respective Affiliates, or Inotera, to take any Divestiture Action; and

(e) if the Filing Event is prevented from occurring or closing as a result of any applicable Regulatory Laws, after exhausting all efforts required under this Section 2.4 to obtain the necessary approval of any applicable Governmental Entity, then the JV Parties and the Joinder Parties shall negotiate in good faith to agree upon an alternative event or transaction that would be permissible under applicable Regulatory Laws, and would approximate, as closely as possible, the intent and contemplated effect of the original Filing Event.

## ARTICLE 3

## CAPITALIZATION; CONTRIBUTION OF CAPITAL

Section 3.1 Authorized Capital. In accordance with Section 6.5, the JV Parties and the Joinder Parties shall use best efforts to cause the authorized capital of Inotera to be amended from time to time, as may be necessary or desirable to consummate the transactions contemplated herein and in the New Finance Agreement in accordance with the Applicable Laws of the ROC.

Section 3.2 Capital Contributions. None of the JV Parties shall be obligated to make any contribution of capital to Inotera, except to the extent any such JV Party obligates itself to do so by signing a written agreement therefor.

Section 3.3 Unilateral Purchase of Shares. Except as otherwise provided herein, [***] shall, and none of them shall permit their respective Subsidiaries to, directly or indirectly acquire Shares or any other equity-linked securities of Inotera from any Person other than Inotera, without the prior written consent of [***]. [***] shall provide [***] with prompt written notice of any acquisition, directly or indirectly, of Shares from a Third Party by any of [***] or their respective Subsidiaries. Except as expressly contemplated by the Master Agreement, the New Finance Agreement or a Joinder Agreement, [***] shall use its best efforts to prevent Inotera from issuing Shares or any other equity-linked security of Inotera, directly or indirectly, to [***] without the prior written consent of [***]. If an [***] acquires Shares or any other equity-linked security of Inotera, whether from Inotera or otherwise (except as a result of a Permitted Transfer as contemplated by Section 9.2), [***] shall, notwithstanding anything to the contrary in Sections 5.1(b) or (c), use their respective commercially reasonable efforts to cause director seats on the Board of Directors to be allocated between MNL and NTC, consistent with the principles set forth in Sections 5.1(b) and (c). Notwithstanding the foregoing, the failure of the JV Parties and the Joinder Parties to achieve the foregoing result after using such commercially reasonable efforts shall not be a breach of this section or create any liability for such failure.

## ARTICLE 4

## BANK LOANS

If the Board of Directors shall at any time determine that there is a need for Inotera to obtain external financing, the JV Parties and the Joinder Parties will assist Inotera to seek and obtain commercial loans or other financing arrangements from banks and other financial institutions on competitive market terms and otherwise as Inotera may reasonably require. None of the JV Parties or the Joinder Parties (or any of their representatives) shall be obligated under this Agreement or otherwise to provide any guarantee or security for any such loans in favor of Inotera, unless specifically agreed in writing by such JV Party or Joinder Party (or its duly authorized representative).

## ARTICLE 5

## MANAGEMENT OF INOTERA

Section 5.1 Board of Directors.

(a) Power and Authority. The JV Parties and the Joinder Parties shall use best efforts to cause the Board of Directors to be responsible for the overall management of the business, affairs and operations of Inotera. The JV Parties and the Joinder Parties shall use best efforts to cause the Board of Directors to have all the rights and powers given to it under the Articles of Incorporation and the Applicable Laws of the ROC, including without limitation, the ROC Company Law.

(b) Number of Directors.

(i) The JV Parties and the Joinder Parties shall use best efforts to cause the Articles of Incorporation to provide for Inotera to have a Board of Directors consisting of twelve (12) directors. Subject to Sections 5.1(b)(ii) and 5.1(b)(iii), the JV Parties and the Joinder Parties shall use best efforts to cause the directors to be designated and elected as follows:

(A) Subject to the following provisions of this Section 5.1(b)(i), (x) MNL shall be entitled to designate five (5) Persons as its representative directors on the Board of Directors; (y) NTC shall be entitled to designate five (5) Persons as its representative directors on the Board of Directors; and (z) two (2) directors shall be independent of the JV Parties as required under the Applicable Laws of the ROC and applicable listing rules, one (1) of whom shall be nominated by MNL, provided that such nominee is reasonably acceptable to NTC, and one (1) of whom shall be nominated by NTC, provided that such nominee is reasonably acceptable to MNL.

(B) If the JV Parties and the Joinder Parties [***], (x) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; (y) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; and (z) [***] directors shall be independent of the JV Parties as required under the Applicable Laws of the ROC and applicable listing rules, [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], and [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***].

(C) If the JV Parties and the Joinder Parties [***], (x) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; (y) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; and (z) [***] directors shall be independent of the JV Parties as required under the Applicable Laws of the ROC and applicable listing rules, [***] of whom shall be

nominated by [***], provided that such nominee is reasonably acceptable to [***], and [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***].

(D) If the JV Parties and the Joinder Parties [***], (x) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; (y) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; and (z) [***] directors shall be independent of the JV Parties as required under the Applicable Laws of the ROC and applicable listing rules, [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], and [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***].

(E) If the JV Parties and the Joinder Parties [***], (x) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; (y) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; and (z) [***] directors shall be independent of the JV Parties as required under the Applicable Laws of the ROC and applicable listing rules, [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], and [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***].

(F) If the JV Parties and the Joinder Parties [***], (x) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; (y) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; and (z) [***] directors shall be independent of the JV Parties as required under the Applicable Laws of the ROC and applicable listing rules, [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], and [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***].

(G) If the JV Parties and the Joinder Parties [***], (x) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; (y) [***] shall be entitled to designate [***]Persons as its representative directors on the Board of Directors; and (z) [***] directors shall be independent of the JV Parties as required under the Applicable Laws of the ROC and applicable listing rules, [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], and [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***].

(H) If the JV Parties and the Joinder Parties [***], (x) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of

Directors; and (y) [***] shall be entitled to designate [***] Person as its representative director on the Board of Directors.

(I) If the JV Parties and the Joinder Parties [***], (x) [***] shall be entitled to designate [***] Person as its representative director on the Board of Directors; and (y) [***] shall be entitled to designate [***] Person as its representative director on the Board of Directors.

(ii) Notwithstanding Section 5.1(b)(i), if, pursuant to Applicable Law of the ROC and applicable listing rules, Inotera is required to have at least three (3) directors that are independent of the JV Parties, the JV Parties and the Joinder Parties shall use best efforts to cause the Articles of Incorporation to provide for Inotera to have a Board of Directors consisting of thirteen (13) directors, three (3) of which shall be independent directors. The JV Parties and the Joinder Parties shall use best efforts to cause twelve (12) of such directors to be designated and elected pursuant to Section 5.1(b)(i) and the third independent director to be nominated jointly by NTC and MNL; provided, however, that if NTC and MNL are unable to agree to the nomination of the third independent director, then such independent director shall be nominated by MNL, provided that such nominee is reasonably acceptable to NTC.

(iii) Notwithstanding Sections 5.1(b)(i) and 5.1(b)(ii), from and after January 1, 2016, provided, however, that the Board Switch Time shall be an earlier date (which date shall not be earlier than the earlier of [***] or the date of [***]) as specified by MNL in a written notice to NTC if not [***] (it being understood and agreed that if it would be [***], NTC and the Joinder Parties shall use their reasonable efforts to [***]) (the "**Board Switch Time**"), the JV Parties and the Joinder Parties shall use best efforts to cause the directors to be designated and elected as follows:

(A) Subject to the following provisions of this Section 5.1(b)(iii), (x) MNL shall be entitled to designate five (5) Persons as its representative directors on the Board of Directors; (y) NTC shall be entitled to designate four (4) Persons as its representative directors on the Board of Directors; and (z) three (3) directors shall be independent of the JV Parties as required under the Applicable Laws of the ROC and applicable listing rules, one (1) of whom shall be nominated by MNL, provided that such nominee is reasonably acceptable to NTC, one (1) of whom shall be nominated by NTC, provided that such nominee is reasonably acceptable to MNL, and the third of whom shall be nominated jointly by MNL and NTC; provided, however, that if MNL and NTC are unable to agree to the nomination of such third independent director, then such third independent director shall be nominated by NTC, provided that such nominee is reasonably acceptable to MNL.

(B) If the JV Parties and the Joinder Parties [***], (x) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; (y) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; and (z) [***] directors shall be independent of the JV Parties as required

under the Applicable Laws of the ROC and applicable listing rules, [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], and [***] of whom shall be nominated [***]; provided, however, that if [***] to the nomination of [***] independent director, then [***] independent director shall be nominated by [***], provided that such nominee is reasonably acceptable to [***].

(C) If the JV Parties and the Joinder Parties are [***], (x) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; (y) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; and (z) [***] directors shall be independent of the JV Parties as required under the Applicable Laws of the ROC and applicable listing rules, [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], and [***] of whom shall be nominated [***]; provided, however, that if [***] to the nomination of [***] independent director, then [***] independent director shall be nominated by [***], provided that such nominee is reasonably acceptable to [***].

(D) If the JV Parties and the Joinder Parties are [***], (x) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; (y) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; and (z) [***] directors shall be independent of the JV Parties as required under the Applicable Laws of the ROC and applicable listing rules, [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], and [***] of whom shall be nominated [***]; provided, however, that if [***] to the nomination of [***] independent director, then [***] independent director shall be nominated by [***], provided that such nominee is reasonably acceptable to [***].

(E) If the JV Parties and the Joinder Parties are [***], (x) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; (y) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; and (z) [***] directors shall be independent of the JV Parties as required under the Applicable Laws of the ROC and applicable listing rules, [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], and [***] of whom shall be nominated [***]; provided, however, that if [***] to the nomination of [***] independent director, [***] independent director shall be nominated by [***], provided that such nominee is reasonably acceptable to [***].

(F) If the JV Parties and the Joinder Parties are [***], (x) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; (y) [***] shall be entitled to designate [***] Person as its representative director on

the Board of Directors; and (z) [***] directors shall be independent of the JV Parties as required under the Applicable Laws of the ROC and applicable listing rules, [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], [***] of whom shall be nominated by [***], provided that such nominee is reasonably acceptable to [***], and [***] of whom shall be nominated [***]; provided, however, that if [***] to the nomination of [***] independent director, [***] independent director shall be nominated by [***], provided that such nominee is reasonably acceptable to [***].

(G) If the JV Parties and the Joinder Parties are [***], (x) [***] shall be entitled to designate [***] Persons as its representative directors on the Board of Directors; and (y) [***] shall be entitled to designate [***] Person as its representative director on the Board of Directors.

(H) If the JV Parties and the Joinder Parties are [***], (x) [***] shall be entitled to designate [***] Person as its representative director on the Board of Directors; and (y) [***] shall be entitled to designate [***] Person as its representative director on the Board of Directors.

(c) Agreement to Vote.

(i) The JV Parties and the Joinder Parties agree to vote, in any Shareholders' Meeting where directors are elected, in a coordinated manner, to elect all of the Persons nominated or designated in accordance with Section 5.1(b) above.

(ii) If for any reason the JV Parties and the Joinder Parties shall be unable to elect the number of Persons specified in Section 5.1(b)(i), 5.1(b)(ii) or 5.1(b)(iii), as applicable, to serve on the Board of Directors pursuant to Section 5.1(b), the JV Parties and the Joinder Parties shall vote, in a coordinated manner, to elect as many of such Persons as possible, consistent with the principles set forth in Section 5.1.

(d) Removal and Replacement. Any of the representatives serving on the Board of Directors may be removed or replaced for any reason by the Person that designated him or her. If any such representative serving on the Board of Directors is so removed or replaced or otherwise ceases to serve as a representative on the Board of Directors, the Person that designated such representative shall be entitled to designate another Person to fill such vacancy, and the JV Parties and the Joinder Parties shall use best efforts to have such replacement representative serve on the Board of Directors; provided, that the designee to replace a director that is independent from the JV Parties must be reasonably acceptable to MNL or NTC, as applicable, in the same manner as set forth in Section 5.1(b)(i), Section 5.1(b)(ii) and Section 5.1(b)(iii), as applicable.

(e) Compensation. The directors, except for the independent directors, if any, shall not receive any compensation for serving as such, although the Board of Directors may

authorize the reimbursement of expenses reasonably incurred in connection with the performance of their duties.

(f) Meetings of the Board of Directors; Notice. The JV Parties and the Joinder Parties shall use best efforts to cause or effect the following:

(i) The Board of Directors shall meet from time to time but at least once per Fiscal Quarter in Taiwan (or such other place as the Board of Directors may decide) by not less than fourteen (14) days notice in writing. Emergency meetings of the Board of Directors may be convened from time to time by the Chairman, or the Vice-Chairman pursuant to Section 5.2(c), by not less than two (2) Business Days notice in writing.

(ii) A notice of a meeting of the Board of Directors shall contain the time, date, location and agenda for such meeting. The presence of any director at a meeting (including attendance by means of video conference) shall constitute a waiver of notice of the meeting with respect to such director.

(iii) The Board of Directors shall cause written minutes to be prepared of all actions, determinations and resolutions taken by the Board of Directors and a copy thereof sent to each director and supervisor of Inotera within twenty (20) days of each meeting.

(g) Proxy and Video Conference. The JV Parties and the Joinder Parties shall use best efforts to cause Inotera to allow that: (i) in any case where a director cannot attend a meeting of the Board of Directors, such director may appoint another director as his or her proxy in accordance with the ROC Company Law; (ii) all or any of the directors may participate in a meeting of the Board of Directors by means of a video conference which allows all persons participating in the meeting to see and hear each other; and (iii) a director so participating shall be deemed to be present in person at the meeting and shall be entitled to vote or be counted in a quorum accordingly.

(h) Quorum. The JV Parties and the Joinder Parties shall use best efforts to cause the presence of [***] of the directors in office, in each case in person, by proxy or by video conference, to be necessary and sufficient to constitute a quorum for the purpose of taking action by the directors at any meeting of the Board of Directors. No action taken by the Board of Directors at any meeting shall be valid unless the requisite quorum is present.

(i) Voting. Unless a higher majority of votes is specifically required under the ROC Company Law or the Articles of Incorporation, the JV Parties and the Joinder Parties shall use best efforts to cause all actions, determinations or resolutions of the Board of Directors to require the affirmative vote of a two-thirds (2/3) majority of the directors present at any meeting of the Board of Directors at which a quorum is present.

(j) Matters Requiring the Approval of the Board of Directors. The JV Parties and the Joinder Parties shall use best efforts to cause each of the following actions to require the

approval of the Board of Directors by resolution adopted in accordance with Section 5.1(i) above (which approval may be obtained through the adoption of a Business Plan by the Board of Directors in accordance with Section 7.5, provided, that the relevant Business Plan sets forth such action in reasonable detail):

(i) appointing or removing the Chairman and, once the position has been created, the Vice-Chairman of the Board of Directors and appointing or removing the President, the CFO, or any Vice Presidents of Inotera;

(ii) approving or amending any Business Plan, including the Budget, any quarterly budgets, the production plan, the profit and loss plan, the capital investment plan and the financial plan;

(iii) issuing new Shares within the authorized capital of Inotera or issuing equity-linked securities (except to the extent contemplated by the New Finance Agreement or a Joinder Agreement);

(iv) determining long-term policies of Inotera, including substantial change in the organizational structure and business operation of Inotera;

(v) determining employment terms, including compensation packages of the President, the CFO, any Vice President, and any assistant Vice Presidents of Inotera;

(vi) establishing Subsidiaries, opening and closing branch offices, acquiring or selling all or part of the assets of another entity or business, establishing new business sites and closing of existing ones;

(vii) setting the limits of authorities of various employment positions and approving the internal chart of authorities;

(viii) making capital expenditures (or a group of related capital expenditures) in an amount equal to or greater than NT$70,000,000 individually or NT$350,000,000 in the aggregate in any one Fiscal Quarter;

(ix) borrowing or lending to, or guaranteeing the obligations of, any Third Party;

(x) pledging or hypothecating, or creating any encumbrance or other security interest in, Inotera's assets;

(xi) issuing any debt securities of Inotera;

(xii) entering into an agreement for the purchase, transfer, sale or any other disposal of assets valued at an amount greater than NT$70,000,000 other than transfers, sales or dispositions of assets in the ordinary course of business of Inotera;

(xiii) entering into, amending or terminating any material agreement relating to intellectual property rights or know how;

(xiv) entering into, amending or terminating any agreement or other arrangement with, or for the benefit of, any director of Inotera;

(xv) establishing, modifying or eliminating any significant accounting or tax policy, procedure or principle;

(xvi) creating new product lines or discontinuing existing product lines;

(xvii) commencing any litigation as plaintiff or settling any litigation matters;

(xviii) preparing and submitting proposals for surplus earning distributions and loss offset to the shareholders of Inotera for approval;

(xix) submitting any matters to the shareholders of Inotera for consideration or approval as may be required by Applicable Law;

(xx) entering into, modifying, extending or terminating any one-time service or purchase of goods agreement in the amount of more than NT$70,000,000 or any long-term service or purchase agreement for goods between Inotera and a shareholder holding more than 10% of the issued share capital of Inotera, or an Affiliate of such shareholder;

(xxi) redeeming or repurchasing Shares;

(xxii) voluntary submission by Inotera to receivership, reorganization, bankruptcy or any similar status; and

(xxiii) deciding other important matters related to Inotera that arise other than in the ordinary course of business.

Section 5.2 Chairman and Vice-Chairman.

(a) Chairman. The JV Parties and the Joinder Parties shall use best efforts to cause the Chairman to be a director designated by NTC, subject to the consent of MNL, which consent shall not be unreasonably withheld. The JV Parties and the Joinder Parties shall use best efforts to cause the Chairman to have such duties and responsibilities as may be assigned to him or her by the Board of Directors. The JV Parties and the Joinder Parties shall use best efforts to cause the Chairman to not have a second or casting vote.

(b) Vice-Chairman. The JV Parties and the Joinder Parties shall use best efforts to cause the Vice-Chairman to be a director designated by MNL (or, at MNL's direction, Numonyx B.V.), subject to the consent of NTC, which consent shall not be unreasonably

withheld. The JV Parties and the Joinder Parties shall use best efforts to cause the Vice-Chairman to not have a second or casting vote.

(c) Convening of the Board of Directors Meeting. The JV Parties and the Joinder Parties shall use best efforts to cause meetings of the Board of Directors to be convened by the Chairman; provided, that NTC and the Joinder Parties shall use their best efforts to cause the Chairman to convene a meeting of the Board of Directors upon the request, at any time, of any MNL Director. If the Chairman does not, within one week (or within three (3) days for convening an emergency meeting of the Board of Directors), comply with such director's request, the JV Parties and the Joinder Parties shall use best efforts to cause the Vice-Chairman to have the right to convene the meeting of the Board of Directors as requested by such director. The JV Parties and the Joinder Parties shall use best efforts to cause each director of Inotera to have the right to request the Chairman to convene a meeting of the Board of Directors indicating the proposed agenda.

Section 5.3 Supervisors.

(a) Number of Supervisors. The JV Parties and the Joinder Parties shall use best efforts to cause the Articles of Incorporation to provide for Inotera to have four (4) supervisors. The JV Parties and the Joinder Parties agree to vote, in any Shareholders' Meeting where supervisors are elected, in a coordinated manner, to elect as supervisors two (2) natural persons recommended by MNL and two (2) Persons designated by NCPC.

(b) Agreement to Vote. The JV Parties and the Joinder Parties agree to vote, in any Shareholders' Meeting where supervisors are elected, in a coordinated manner, to elect all of the Persons recommended by MNL and designated by NCPC in accordance with Section 5.3(a) above.

(c) Removal and Replacement. The JV Parties and the Joinder Parties shall use best efforts to provide that any of the supervisors may be removed or replaced for any reason by the Person that recommended or designated him or her. If any supervisor designated by NCPC is so removed or replaced or otherwise ceases to serve as a supervisor, the JV Parties and the Joinder Parties shall use best efforts to cause NCPC to designate another Person to fill such vacancy. If for any reason any supervisor recommended by MNL ceases to serve as a supervisor, the JV Parties and the Joinder Parties shall use best efforts to fill such vacancy by another natural Person recommended by MNL in the next Shareholders' Meeting.

(d) Compensation. The JV Parties and the Joinder Parties shall use best efforts to cause the supervisors, except for the independent supervisors, if any, to not receive any compensation for serving as such, although the Board of Directors may authorize the reimbursement of expenses reasonably incurred in connection with the performance of their duties.

(e) Restriction on Employment. The JV Parties and the Joinder Parties shall use best efforts to cause the supervisors to not be concurrently employed by Inotera in any other capacity.

Section 5.4 President and Chief Financial Officer.

(a) President. The JV Parties and the Joinder Parties shall use best efforts to cause the Articles of Incorporation to provide for Inotera to have a president (the "**President**"), who shall report to the Board of Directors and serve at its pleasure. The President shall have such daily operation and management responsibilities of Inotera as may be assigned or delegated by the Board of Directors from time to time. The JV Parties and the Joinder Parties shall use best efforts to cause the President to be the person nominated by [***], subject to the consent of [***], which consent shall not be unreasonably withheld.

(b) Chief Financial Officer. The JV Parties and the Joinder Parties shall use best efforts to cause the Articles of Incorporation to provide for Inotera to have a chief financial officer (the "**CFO**"), who shall report to the Board of Directors and serve at its pleasure. The CFO shall have such daily operation and management responsibilities of Inotera as may be assigned or delegated by the Board of Directors from time to time. The JV Parties and the Joinder Parties shall use best efforts to cause the CFO to be the person nominated by [***], subject to the consent of [***], which consent shall not be unreasonably withheld.

(c) Termination and Vacancy. The JV Parties and the Joinder Parties shall use best efforts to cause the Board of Directors to have the exclusive right to terminate the services of the President and the CFO with or without cause. In the event of any such termination or in the event of any vacancy as a result of death, resignation, retirement or any other reason (other than pursuant to Section 5.5(b)(ii)), the JV Parties and the Joinder Parties shall use best efforts to cause the JV Party then having the right to nominate the President or the CFO, as the case may be, to be entitled to nominate another person, subject to the same consent requirement set forth in Sections 5.4(a) or (b) above, as the case may be, to fill such vacancy for appointment by the Board of Directors.

(d) Authority. With respect to the execution of the daily operation and management of Inotera, the JV Parties and the Joinder Parties shall use best efforts to cause the President to have the authority to, among other things:

(i) propose the annual budget and business plan of Inotera;

(ii) approve capital expenditures of Inotera of NT$70,000,000 or less in a single event, or an aggregate of NT$350,000,000 or less in any Fiscal Quarter;

(iii) approve borrowing and lending of Inotera and dispositions of assets of Inotera, in each case less than NT$70,000,000; and

(iv) execute annual budgets of Inotera approved by the Board of Directors.

Section 5.5 Other Officers. The JV Parties and the Joinder Parties shall use best efforts to allow the President to appoint, subject to the approval of the Board of Directors, and be assisted by such other officers of Inotera as the President may consider necessary or desirable from time to time. Such other officers shall perform such duties and have such powers specifically delegated to them by the Board of Directors from time to time. The JV Parties and the Joinder Parties shall use best efforts to cause the Board of Directors to determine, from time to time, the compensation, including any incentive compensation, for which such officers may be offered. The JV Parties and the Joinder Parties shall use best efforts to allow the Board of Directors to, from time to time, also appoint, and assign titles to, other officers of Inotera, and delegate to such officers such authorities and duties as the Board of Directors may deem advisable.

## ARTICLE 6

## SHAREHOLDERS' MEETINGS

Section 6.1 Annual Meeting. The JV Parties and the Joinder Parties shall use best efforts to cause the annual meetings of the shareholders of Inotera to be convened at least once annually by not less than thirty (30) days prior notice in writing accompanied by an agenda specifying the business to be transacted.

Section 6.2 Special Meeting. The JV Parties and the Joinder Parties shall use best efforts to cause special meetings of the shareholders of Inotera to be held from time to time and to be convened by the Board of Directors by not less than fifteen (15) days prior notice in writing accompanied by an agenda specifying the business to be transacted. (Any annual meetings of the shareholders and any special meetings of the shareholders shall individually be referred to as a "**Shareholders' Meeting**" and collectively be referred to as "**Shareholders' Meetings**".)

Section 6.3 Quorum. Unless a higher quorum is required under the Applicable Laws, the JV Parties and the Joinder Parties shall use best efforts to cause the presence of the shareholders of Inotera representing a majority of the issued and outstanding Shares to be necessary and sufficient to constitute a quorum for the purpose of taking action at any Shareholders' Meeting. The JV Parties and the Joinder Parties shall use best efforts to provide that no action taken at a Shareholders' Meeting shall be valid unless the requisite quorum is present.

Section 6.4 Voting. The JV Parties and the Joinder Parties shall use best efforts to cause each Share to entitle its holder to one vote. Unless a higher vote is required under the Applicable Laws, the JV Parties and the Joinder Parties shall use best efforts to cause all actions, determinations or resolutions of the shareholders at any Shareholders' Meeting of Inotera to require the affirmative vote of (a) a majority of the votes represented in person or by proxy at the

Shareholders' Meeting at which a quorum is present until the earlier of the date on which (i) the [***] is greater than [***] and (ii) any [***] have been satisfied, and (b) thereafter, [***] or more of the votes represented in person or by proxy at the Shareholders' Meeting at which a quorum is present.

Section 6.5 Matters Requiring the Approval of the Shareholders. The JV Parties and the Joinder Parties shall use best efforts to cause each of the following actions to require the approval of the shareholders of Inotera by resolution adopted in accordance with Section 6.4 above:

(a) amending, restating or revoking the Articles of Incorporation;

(b) electing or removing the directors or the supervisors;

(c) determining the compensation of any director or supervisor;

(d) approving the balance sheet and other financial statements received from the Board of Directors;

(e) appointing and removing the auditors of Inotera;

(f) approval of surplus earning distribution or loss offset proposals;

(g) any merger, consolidation or other business combination to which Inotera is a party, or any other transaction to which Inotera is a party (other than where Inotera is merged or combined with or consolidated into a Wholly-Owned Subsidiary of Inotera), resulting in (i) a change of control of Inotera, other than a change of control that may occur pursuant to Section 9.3, 12.3, 12.6 or 13.1 or (ii) the sale of all or substantially all assets of Inotera;

(h) liquidation or dissolution of Inotera; and

(i) other actions reserved to the determination of the shareholders of Inotera by the ROC Company Law.

## ARTICLE 7

## OPERATIONS

Section 7.1 Manufacturing Facility; Fab Equipment.

(a) Fab Equipment. Subject to the mutual agreement of MNL and NTC, Inotera may purchase, at fair market value, Micron's or NTC's idle equipment that is suitable for use in connection with the manufacturing of Stack DRAM Products.

(b) Upgrade and Enhancements. The JV Parties and the Joinder Parties shall use best efforts to cause Inotera to bear all costs and expenses for any upgrade, enhancement, automation and addition of new process equipment.

Section 7.2 Manufacturing Plan. The JV Parties and the Joinder Parties shall use best efforts to cause Inotera to prepare an annual manufacturing plan (the "**Manufacturing Plan**") under the direction of the President, with input from the customers of Inotera (or such other persons or committees charged with such responsibility from time to time by the JV Parties). The Manufacturing Plan shall be updated by Inotera in accordance with the procedures set forth in the Micron Supply Agreement and taking into consideration the NTC Supply Agreement. The Manufacturing Plan shall address various manufacturing issues, including without limitation, the DRAM Products to be manufactured, priority of Wafer Starts and weekly output.

Section 7.3 Certain Related Party Matters. No transaction, contract or agreement, or amendment or modification of the terms or conditions of any contract or agreement (including, without limitation, the NTC Supply Agreement), between any of NTC, the Joinder Parties, or any of their respective Affiliates, on the one hand, and Inotera, on the other hand (each, a "**NTC Agreement**"), shall be made without prior written notice to and the prior written consent of MNL, which consent shall not be unreasonably withheld.

Section 7.4 Marketing and Sales. With respect to DRAM Products purchased from Inotera, each of Micron and MSA, on the one hand, and NTC, on the other hand, shall be free to compete against each other, anywhere in the world and with any customers, using its own marketing and sales channels and personnel. The JV Parties and the Joinder Parties agree that appropriate safeguards shall be put in place by each JV Party and each Joinder Party, and the JV Parties and the Joinder Parties shall use best efforts to cause Inotera to put in place such safeguards, to ensure compliance with all applicable competition or anti-trust laws.

Section 7.5 Business Plans and Budgets.

(a) At least [***] prior to the beginning of each [***], the JV Parties and the Joinder Parties shall use best efforts to cause the President, with input from such relevant Persons or committees charged by the JV Parties and the Joinder Parties with responsibility for such matters from time to time, to prepare and submit to the Board of Directors for approval, a [***] business plan (the "**Business Plan**") at least [***] prior to the beginning of the next [***].

(b) The Business Plan shall include an annual budget for each of the [***] covered by such Business Plan (the "**Budget**"), which shall cover (i) [***] to be made during the period covered by the Budget, (ii) [***] expected to be [***], (iii) [***] of [***], (iv) [***] needs of [***], (v) [***], and (vi) such other business activities as shall be necessary and appropriate.

(c) The JV Parties and the Joinder Parties shall use best efforts to cause the Business Plan, including the Budget, to not be amended, updated, modified or superseded without the approval of the Board of Directors.

## ARTICLE 8

## EMPLOYEE MATTERS

Section 8.1 Employees.

(a) Employees of Inotera. The JV Parties and the Joinder Parties shall use best efforts to cause Inotera to employ its own personnel, including administrative staff, operators, technicians and engineers, and, except with respect to employees assigned to Inotera pursuant to the Micron Assigned Employee Agreement, to be their exclusive employer.

(b) Hiring. The JV Parties and the Joinder Parties shall use best efforts to cause the number, position and compensation of the employees of Inotera to be as determined by the President, consistent with the Business Plan and other employee policies, program and benefits approved by the Board of Directors or as otherwise expressly authorized by the Board of Directors.

(c) Employee Policies. The JV Parties and the Joinder Parties shall use best efforts to cause, subject to the approval of the Board of Directors, Inotera to put in place and implement such employee policies, programs and benefits as determined by the President or as may otherwise be required by Applicable Laws.

Section 8.2 Micron Assigned Employees Agreement. Certain employees of Micron may be assigned or transferred to work at or with Inotera. In connection therewith, Micron and Inotera have entered into the Micron Assigned Employee Agreement.

Section 8.3 Employment and Service-Related Forms. The JV Parties and the Joinder Parties shall use best efforts to cause Inotera to have policies applicable to, and ensure that all of its officers, employees and third-party independent contractors, third-party consultants, and other third-party service providers enter into appropriate agreements with respect to, (a) protection of confidential information of Inotera, (b) compliance with Applicable Laws, (c) other matters related to the delivery of services to, or employment of such Person by, Inotera, (d) intellectual property creation and assignment documents, including invention disclosures, pursuant to which ownership to any intellectual property created in the course of employment with (or service to) Inotera shall be transferred and assigned to Inotera or its designee, as appropriate.

Section 8.4 Restrictions on [***] Employees.

(a) Micron Restrictions. During the Employee Restriction Period, MNL, Numonyx B.V. and MTAP shall not, and shall cause Micron and its Affiliates not to, without the

prior written consent of NTC, (i) directly or indirectly [***] or make arrangements to [***] any persons engaged or involved in [***] (collectively, "**Prohibited Employees**") that is [***], employed by NTC, Inotera or their respective Subsidiaries, or (ii) directly or indirectly [***], or make arrangements to [***], any person [***] ("**Restricted Employees**") that is [***], employed by NTC, Inotera or their respective Subsidiaries. Notwithstanding the foregoing, the restrictions in this Section 8.4(a) against [***] Prohibited Employees and Restricted Employees shall not (x) apply with respect to the [***] of any person whose employment was terminated by, or who has received a notice of termination or lay-off from, NTC, Inotera or their respective Subsidiaries, or (y) be binding on an Affiliate of Micron that is not a [***] and that is not [***], provided that such Affiliate of Micron does not do so with information or assistance provided by Micron, a Subsidiary of Micron or any of their respective officers, directors, employees or agents and such [***] will not [***].

(b) NTC Restrictions. During the Employee Restriction Period, NTC and the Joinder Parties shall not, and shall cause their Affiliates not to, without the prior written consent of MNL and Micron, (i) directly or indirectly [***], or make arrangements to [***], any Prohibited Employee that is [***] employed by Micron, Inotera or their respective Subsidiaries, or (ii) directly or indirectly [***], or make arrangements to [***], any Restricted Employee that is [***], employed by Micron, Inotera or their respective Subsidiaries. Notwithstanding the foregoing, the restrictions against [***] a Prohibited Employee or a Restricted Employee shall not apply to an Affiliate of NTC that is not [***] and that is not [***], provided that such Joinder Party or Affiliate of NTC does not do so with information or assistance provided by NTC, a Joinder Party, a Subsidiary of NTC or a Joinder Party, or any of their respective officers, directors, employees or agents and such [***] will not [***].

## ARTICLE 9

## TRANSFER RESTRICTIONS

Section 9.1 Restrictions on Transfer.

(a) Transfer Prohibitions.

(i) In no event shall any of NTC or the Joinder Parties sell, exchange, transfer, dispose of, encumber, pledge, mortgage or hypothecate (each a "**Transfer**"), whether directly or indirectly, any part of the Shares owned by it to any Person if immediately after such Transfer the aggregate Equity Interest of NTC and the Joinder Parties would be below [***] percent ([***]%). Except in connection with [***], in no event shall MNL, Numonyx B.V. or MTAP Transfer, whether directly or indirectly, any part of the Shares owned by it to any Person if immediately after such Transfer the aggregate Equity Interest of MNL, Numonyx B.V. and MTAP would be below [***] percent ([***]%).

(ii) The JV Parties and the Joinder Parties agree that:

(A) except in connection with [***], none of MNL, Numonyx B.V. and MTAP shall Transfer any part of the Shares to [***] without the prior written consent of NTC; and

(B) none of NTC or the Joinder Parties shall Transfer any part of the Shares to [***] without the prior written consent of MNL;

provided, however, the provisions of this Section 9.1(a)(ii) shall not apply to any Transfer of Shares conducted on, and through the normal, in-market public trading procedures of, the Taiwan Stock Exchange or any other stock exchange upon which the Shares are listed, in each case other than Transfers conducted through after-hours trading on such exchanges.

(b) Change of Control Event. Neither (i) a Transfer of shares or securities issued by a JV Party or a Joinder Party nor (ii) a change of control with respect to a JV Party or a Joinder Party shall constitute a Transfer prohibited under this Section 9.1.

(c) Transferee to be Bound. Notwithstanding consent being given by JV Parties or Joinder Parties to other JV Parties or Joinder Parties for the Transfer of any part of the Shares, the transferring JV Parties or Joinder Parties, as applicable, shall cause and procure the proposed transferee to agree in writing to perform and be bound by all duties and obligations of the transferring JV Parties or Joinder Parties, as applicable, including the Transfer restrictions under Section 9.1 of this Agreement, except (i) where the Transfer is conducted on, and through the normal, in-market public trading procedures of, the Taiwan Stock Exchange or any other stock exchange upon which the Shares are listed, in each case other than Transfers conducted through after-hours trading on such exchanges, or (ii) where such Transfer is in connection with [***].

Section 9.2 Permitted Transfers. Notwithstanding Section 9.1, any JV Party and any Joinder Party may Transfer all (but not less than all) of its shares in Inotera to Micron or to a Wholly-Owned Subsidiary of Micron or to NTC or a Wholly-Owned Subsidiary of NTC or a Joinder Party (a "**Permitted Transfer**"); provided, that:

(a) such transferee shall agree in writing to perform and be bound by all duties and obligations of the transferring JV Party or Joinder Party, as applicable, including the obligations set forth in this Agreement and any Joint Venture Documents to which the transferring JV Party or Joinder Party is a party;

(b) the transferring JV Party or Joinder Party, as applicable, shall not be released from its duties and obligations under this Agreement or any other Joint Venture Documents and shall remain fully liable for the performance thereof by such transferee;

(c) such transferee, if not Micron, NTC or a Joinder Party shall remain a Wholly-Owned Subsidiary of Micron, NTC or a Joinder Party during the period of time such transferee owns Shares and, if it does not continue as such, that transferee shall transfer all of the Shares it

owns to Micron, NTC or a Joinder Party or to another Wholly-Owned Subsidiary of Micron, NTC or a Joinder Party prior to ceasing to be a Wholly-Owned Subsidiary of Micron, NTC or a Joinder Party;

(d) at least ten (10) days prior written notice of any such Transfer by a JV Party or a Joinder Party, as applicable, of Shares shall be provided to each other JV Party; and

(e) prior to the effectiveness of a Transfer permitted under this Section 9.2, the transferring JV Party or Joinder Party, as applicable shall deliver to the Board of Directors and each other JV Party and Joinder Party a certificate stating that:

(i) the transferring JV Party or Joinder Party, as applicable, is not in breach of any provisions of this Agreement, any Joinder Agreement or any other Joint Venture Documents to which the transferring JV Party or Joinder Party, as applicable, is a party;

(ii) immediately after giving effect to such Transfer, there will exist no 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 of the transferor or such transferee under this Agreement, any Joinder Agreement or any of the Joint Venture Documents; and

(iii) the Transfer will not, and could not reasonably be expected to, cause an adverse effect on Inotera or any other JV Party, including any material adverse tax consequences or an adverse effect due to the loss of intellectual property rights.

Section 9.3 Right of First Refusal.

(a) Transfer Notice. At any time during the term of this Agreement, and further subject to Section 9.1, if MNL, Numonyx B.V., and/or MTAP, on the one hand (the "**Micron Parties**"), or NTC and/or any Joinder Party, on the other hand (the "**NTC Parties**"), proposes to Transfer, other than as contemplated by Section 9.2, all or any part of its or their Shares in one or more related transactions (such Micron Parties or NTC Parties, as applicable, collectively, the "**Transferor**"), then the Transferor shall give the NTC Parties (if the Transferor is a Micron Party) or the Micron Parties (if the Transferor is a NTC Party) (such entities, the "**Receiving Parties**") a written notice of the Transferor's intention to make the Transfer (the "**Transfer Notice**"), which shall include (i) the number of Shares proposed to be transferred (the "Offered Shares"), (ii) the identity of the prospective transferee, (iii) the consideration and the material terms and conditions upon which the proposed Transfer is to be made and (iv) an irrevocable offer to sell the Offered Shares to the Receiving Parties (hereinafter the "Sale Offer") at the same price and on the same terms and conditions as set forth therein. The Transfer Notice shall also certify that the Transferor has received a firm offer from the prospective transferee and in good faith believes a binding agreement for such Transfer is obtainable on the terms set forth in the Transfer Notice.

(b) Option to Purchase. The Receiving Parties shall have the first right and option, at their sole discretion, but not the obligation, to purchase, in the aggregate, all (but not less than all) of the Offered Shares pro rata in accordance with each Receiving Party's ownership of Shares relative to the other Receiving Parties immediately prior to the Transfer Notice, pursuant to the Sale Offer by delivering a written notice to the Transferor within [***] days from the date of the Sale Offer (such period, the "**Option Period**") stating the Receiving Parties' intention to exercise its right and option to purchase the Offered Shares.

(c) Closing of Transfer to Receiving Parties. The Transfer of Offered Shares resulting from acceptance of the Sale Offer by the Receiving Parties in accordance with paragraph (b) above shall take place at a closing on a date designated by the Receiving Parties within [***] days following such acceptance (or, if any governmental or regulatory approvals, consents, filings or authorizations are required in connection with such Transfer, within [***] days following the receipt of all such approvals, consents, filings or authorizations), or at such other time as the Transferor and the Receiving Parties may otherwise agree. At such closing, the Transferor shall be obligated to sell and Transfer the Offered Shares and the Receiving Parties shall pay the purchase price for such shares in accordance with the terms and conditions set forth in the Sale Offer.

(d) Sale to Third Party. If the Receiving Parties elect not to, or fails to give any notice of their intention to, purchase all of the Offered Shares within the Option Period, then, subject to Section 9.1, the Transferor shall have the right for [***] days thereafter (hereinafter the "**Transfer Period**") to Transfer the Offered Shares to the prospective transferee identified in the Transfer Notice; provided, however, that such Transfer shall be consummated on terms not more favorable to the prospective transferee than the terms specified on the Transfer Notice. If such Transfer is not completed within the Transfer Period, the Transferor shall no longer be permitted to sell such Offered Shares except to again comply with the provisions of this Section 9.3.

(e) Excluded Transfers. Notwithstanding the forgoing, the provisions of this Section 9.3 shall not apply to any Transfer of Shares or depository receipts representing the Shares conducted on, and through the normal, public trading procedures of, the Taiwan Stock Exchange or any other stock exchange upon which the Shares or depository receipts are listed, in each case other than Transfers conducted through after-hours trading on such exchanges.

## ARTICLE 10

## ACCOUNTING; FINANCIAL MATTERS

Section 10.1 Accounting. The JV Parties and the Joinder Parties shall use reasonable efforts to cause Inotera's books of account and records to be kept and maintained in accordance with Taiwan GAAP applied on a consistent basis. The JV Parties and the Joinder Parties shall use reasonable efforts to cause the fiscal year of Inotera to be from January 1 to December 31

("**Fiscal Year**") and the Fiscal Quarter of Inotera to be based on calendar months (ending on the last day of each three-month period).

Section 10.2 Access to Information.

(a) Inspection Rights. To the extent not in violation of Applicable Laws, the JV Parties and the Joinder Parties shall use best efforts to cause (i) MNL and its agents (which may include employees of MNL or of Micron) or MNL's or Micron's independent certified public accountants to have the right, at any reasonable time, to inspect, review, copy and audit (or cause to be audited) at the expense of MNL any and all properties, assets, books of account, corporate records, contracts, documentation and any other material of Inotera or any of its Subsidiaries, at the request of MNL, whether in the possession of the foregoing or its (or their) independent certified public accountants (such right, an "**Inspection Right**"), and (ii) NTC and its agents (which may include employees of NTC), or NTC's independent certified public accountants, to have an Inspection Right at the request and expense of NTC. Upon any such request, the JV Parties and the Joinder Parties shall use reasonable efforts to cause Inotera and each of its relevant Subsidiaries to use reasonable efforts to make available (or cause to make available) to MNL or NTC, as applicable, Inotera's accountants and key employees for interviews to verify information furnished or to enable MNL or NTC, as applicable, to otherwise review Inotera or any of its Subsidiaries and their operations.

(b) Competitively Sensitive Information. The JV Parties and the Joinder Parties recognize that Inotera may, from time to time, be in possession of Competitively Sensitive Information belonging to a JV Party or a Joinder Party, and in no event shall a JV Party or a Joinder Party be entitled to access any Competitively Sensitive Information of another JV Party or Joinder Party in the possession of Inotera. The JV Parties and the Joinder Parties shall use reasonable efforts to cause Inotera to maintain procedures reasonably acceptable to the JV Parties and the Joinder Parties (including requiring that the JV Parties and the Joinder Parties use reasonable efforts to label or otherwise identify Competitively Sensitive Information as such) to ensure that Inotera will not disclose or provide Competitively Sensitive Information of one JV Party or Joinder Party to any other JV Party or Joinder Party (other than to an Inotera employee or to an assigned employee of another JV Party or Joinder Party to the extent required for such employee or assigned employee to perform his or her duties for Inotera) or any third party unless such disclosure is specifically requested by the JV Party or Joinder Party providing such Competitively Sensitive Information.

(c) Information Right. The JV Parties and the Joinder Parties shall use reasonable efforts to cause Inotera to, and to cause the Board of Directors to cause Inotera to, provide to each JV Party, without cost to the JV Parties (except as otherwise provided below), the following:

(i) Monthly Reports. At the end of each fiscal month, Inotera, and, if requested, each of its Subsidiaries, if any, shall provide each JV Party with the following

monthly reports prepared in accordance with Taiwan GAAP consistently applied, in each case within the time period specified below:

(A) monthly cash flow report as soon as practicable, but not later than fifteen (15) days after the end of each fiscal month;

(B) month-end balance sheet as soon as practicable, but not later than fifteen (15) days after the end of each fiscal month;

(C) monthly income statement as soon as practicable, but not later than fifteen (15) days after the end of each fiscal month; and

(D) monthly operational spending summary as soon as practicable, but not later than fifteen (15) days after the end of each fiscal month.

(ii) Quarterly Reports. As soon as practicable, but not later than sixty (60) days after the end of each Fiscal Quarter, a consolidated balance sheet of Inotera as of the end of such period and consolidated statements of income, cash flows and changes in shareholders' equity, as applicable, for such Fiscal Quarter and for the period commencing at the end of the previous Fiscal Year and ending with the end of such period, setting forth in each case in comparative form the corresponding figures for the corresponding period of the preceding fiscal year, each prepared in accordance with Taiwan GAAP. The quarterly financial statements shall be reviewed by a firm of independent certified public accountants selected from time to time by the Board of Directors (the "**Accountants**"). As soon as practicable, but not later than sixty (60) days after the end of each Fiscal Quarter, Inotera shall also prepare a reconciliation of its quarterly financial statements to U.S. GAAP as of the end of each Fiscal Quarter. Inotera and MNL shall cooperate with respect to the preparation of the quarterly financial statements and related reconciliation for Inotera's current Fiscal Quarter, and the presentation thereof shall be as mutually agreed by Inotera and MNL.

(iii) Annual Financial Statements.

(A) As soon as practicable, but not later than one hundred twenty (120) days after the end of each Fiscal Year of Inotera, audited consolidated financial statements of Inotera and its Subsidiaries, which shall include statements of income, cash flows and of changes in shareholders' equity, as applicable, for such Fiscal Year and a balance sheet as of the last day thereof, each prepared in accordance with Taiwan GAAP, consistently applied, and accompanied by the report of the Accountants.

(B) As soon as practicable, but not later than one hundred twenty (120) days after the end of each Fiscal Year of Inotera, audited consolidated financial statements of Inotera and its Subsidiaries, which shall include statements of income, cash flows and of changes in shareholders' equity, as applicable, for such Fiscal Year and a balance sheet as of the last day thereof, each prepared in accordance with U.S. GAAP, consistently applied, and

accompanied by the report of the Accountants. Notwithstanding the first sentence of this Section 10.2(c), unless MNL requests that an audit of such U.S. GAAP financial statement not be undertaken, MNL will bear the cost of such audit.

(d) Other Reports. As soon as practicable, Inotera, and, if requested, each of its Subsidiaries, if any, shall provide MNL with any other reports not specified in Section 10.2(c)(i) - (iii) as MNL may reasonably request, provided, that MNL shall reimburse Inotera for any reasonable out-of-pocket expenses of Inotera paid to any Third Parties in connection with the provision of reports to MNL pursuant to this Section 10.2(d). If reasonably requested by a director of Inotera designated by NTC, Inotera shall provide, as soon as practicable, such director with any other reports not specified in Section 10.2(c)(i) - (iii).

Section 10.3 Other Information Rights. Inotera shall provide to MNL and its Affiliates such financial, accounting and other information as MNL may reasonably request in connection with the accounting and financial reporting obligations of MNL or any of its Affiliates relating to the ownership of Shares. If MNL requests that the Accountants or MNL's own auditors perform audit, review or other agreed upon procedures in connection therewith, the fees and expenses of the Accountants or MNL's auditors relating thereto shall be borne by MNL.

Section 10.4 Reportable Events. The JV Parties and the Joinder Parties shall use reasonable efforts to cause Inotera to provide notice to the JV Parties of any Inotera Reportable Event as soon as practicable and in any event not later than [***] days after Inotera becomes aware of such Inotera Reportable Event. The following events shall be "**Inotera Reportable Events**":

(a) Receipt by Inotera or any of its Subsidiaries of an offer by any Person to buy an equity interest in Inotera or any of its Subsidiaries or a significant amount of its assets or to merge or consolidate with Inotera or any of its Subsidiaries, or any indication of interest from any Person with respect to any such transaction;

(b) The commencement, or threat delivered in writing, of any lawsuit involving Inotera or any of its Subsidiaries;

(c) The receipt by Inotera or any of its Subsidiaries of a notice that Inotera or any of its Subsidiaries is in default under any loan agreement to which Inotera or any of its Subsidiaries is a party;

(d) Any breach by Inotera or any of its Subsidiaries or a JV Party or a Joinder Party or an Affiliate of a JV Party or a Joinder Party of this Agreement, any Joinder Agreement, or any contract between Inotera or any of its Subsidiaries and a JV Party, a Joinder Party or an Affiliate of a JV Party or of a Joinder Party;

(e) The removal or resignation of the auditor for Inotera, or any adoption, or material modification, of any significant accounting policy or tax policy other than those required by Taiwan GAAP; or

(f) Any other event that has had or could reasonably be expected to have a material adverse effect on the business, results of operations, financial condition or assets of Inotera or any of its Subsidiaries.

Section 10.5 Distributions and Dividend Policy.

(a) Out of the net profits of Inotera for each fiscal year, after having provided for income tax, and covered losses of the previous years, the JV Parties and the Joinder Parties shall use best efforts to cause to cause Inotera to first set aside a legal reserve of 10% from the net profit after tax until the accumulated amount of such reserve equals the total issued capital of Inotera. Thereafter, the JV Parties and the Joinder Parties shall use best efforts to cause Inotera to distribute the remainder of the net profit, if any, after providing for any special reserves or reserving certain undistributed earnings for business purposes, as follows:

(i) 1% to 15% of such remaining profits as bonus to employees; and

(ii) any other remaining profits may, at the option of the Board of Directors, be declared and paid as dividends to the shareholders of Inotera.

(b) The JV Parties and the Joinder Parties shall use best efforts to cause Inotera to adopt a policy for its dividend distributions, which shall be in line with its capital budget and long-term financial plans; provided, however, that if Inotera declares dividends, at least fifty percent (50%) of the dividends must be paid in cash.

(c) The JV Parties and the Joinder Parties shall use best efforts to cause Inotera to pay dividends, if any, to shareholders of Inotera in proportion to their respective ownership of Shares.

Section 10.6 Bank Accounts and Funds. The JV Parties and the Joinder Parties shall use reasonable efforts to cause the funds of Inotera, including any cash capital contributions, to be deposited in an interest-bearing account or accounts in the name of Inotera and to not be commingled with the funds of any JV Party, any Joinder Party or any other Person. The JV Parties and the Joinder Parties shall use reasonable efforts to cause the checks, orders or withdrawals to be signed by any one or more Persons as authorized by the Board of Directors.

Section 10.7 Internal Controls. The JV Parties and the Joinder Parties shall use reasonable efforts to cause Inotera to have in place a system of internal accounting controls, in accordance with the policies agreed by the JV Parties, which shall be approved by the Board of Directors and monitored by the President. The JV Parties and the Joinder Parties shall use best efforts to provide that changes to Inotera's system of internal accounting controls shall be made

at the request of any JV Party, subject to the approval of the Board of Directors; provided, however, that in the event one JV Party is required to consolidate the financial results of Inotera under applicable GAAP, the internal controls and accounting systems of Inotera shall be modified as necessary to satisfy that JV Party's requirements relating to internal controls and financial reporting and such JV Party shall be entitled to receive the information and perform the testing that it deems necessary or advisable to satisfy its responsibilities related thereto. At the request of a JV Party, the JV Parties and the Joinder Parties shall use their best efforts to cause Inotera to (a) permit an independent auditor retained by such requesting JV Party and reasonably acceptable to Inotera to perform a reasonable evaluation of the internal controls and accounting systems of Inotera, provided that such evaluation is undertaken at the cost of such requesting JV Party and (b) cooperate with such evaluation.

Section 10.8 FCPA. The JV Parties and the Joinder Parties shall use their best efforts to cause Inotera to comply with, and establish appropriate procedures to ensure compliance with, the United States Foreign Corrupt Practices Act of 1977, as amended, and the UK Bribery Act 2010, as amended.

## ARTICLE 11

## OTHER AGREEMENTS AND COVENANTS

Section 11.1 Tax Cooperation. The JV Parties and the Joinder Parties shall cooperate in a good faith, commercially reasonable manner to maximize tax benefits and minimize tax costs of Inotera and of the JV Parties or their respective Affiliates with respect to the activities of Inotera, consistent with the overall goals of the Joint Venture Documents. Such cooperation shall include (a) the use by the Joinder Parties and NTC of reasonable efforts to assist Micron, MNL, Numonyx B.V., MTAP and the Affiliates of MNL, and Inotera in applying for applicable tax incentives and for a tax withholding exemption in Taiwan, the Netherlands and such other jurisdictions as may be relevant, with respect to payments made by either NTC or Inotera to Micron, MNL, Numonyx B.V., MTAP or any Affiliate of MNL, or by MNL, Numonyx B.V., MTAP or an Affiliate of MNL to Inotera and (b) MNL's use of reasonable efforts to assist NTC in applying for applicable tax incentives and for a tax withholding exemption in Taiwan, the Netherlands and such other jurisdictions as may be relevant, with respect to payments made by either Inotera to NTC, or by NTC or an Affiliate of NTC to Inotera. Additional assistance may include one JV Party or Joinder Party assisting another JV Party or Joinder Party in [***] of the [***] or [***] from a [***]; provided, however, that none of the JV Parties or Joinder Parties shall be required to [***] any of the [***] or take other action that such JV Party or Joinder Party reasonably determines is not commercially reasonable; provided, further, that if one JV Party or Joinder Party (and such JV Party's or Joinder Party's Affiliates) is not likely (based on reasonable assumptions and projections) to benefit directly or indirectly from an action requested by another JV Party or Joinder Party pursuant to this Section 11.1, then the JV Parties and the Joinder Parties shall use good faith commercially reasonable efforts to enter into an agreement requiring the requesting JV Party or Joinder Party to reimburse the other JV Parties and Joinder Parties for

the [***] incurred by such other JV Parties and Joinder Parties to [***] the requesting JV Party or Joinder Party, and the other JV Parties and Joinder Parties shall not be required to incur such costs until such an agreement has been entered into.

Section 11.2 Use of JV Party and Joinder Party Names. Except as may be expressly provided in the Joint Venture Documents, nothing in this Agreement shall be construed as conferring on Inotera, any Subsidiary of Inotera or any JV Party or Joinder Party the right to use in advertising, publicity, marketing or other promotional activities any name, trade name, trademark, service mark or other designation, or any derivation thereof, of the JV Parties or the Joinder Parties (in the case of a JV Party or a Joinder Party, any other JV Party or Joinder Party).

Section 11.3 Covenants of the JV Parties and Joinder Parties. Each JV Party and each Joinder Party agrees and covenants that it will not, without the prior written consent of NTC and MNL:

(a) confess any judgment against Inotera;

(b) enter into any agreement on behalf of, or otherwise purport to bind, any other JV Party, Joinder Party or Inotera;

(c) cause Inotera to take any action in contravention of the Articles of Incorporation;

(d) cause Inotera to dispose of the goodwill or the business opportunities of Inotera; or

(e) cause Inotera to assign or place its property in trust for creditors or on the assignee's promise to pay any indebtedness of Inotera.

Section 11.4 Contractual Relationships.

(a) Contractual Relationship Between Inotera and MNL, Numonyx B.V. and MTAP. With respect to any contract (including under the Micron Supply Agreement) between Inotera, on the one hand, and MNL, Numonyx B.V., MTAP or any of their Affiliates, on the other hand, NTC shall have the right to demand that Inotera, and shall have the right to cause Inotera to, take any action, pursue any right, enforce any obligation or seek recourse pursuant to or under such contract, including with respect to the assertion of any claim or cause of action for breach of contract against MNL, Numonyx B.V., MTAP or any of their Affiliates involved in such contractual relationship with Inotera. In respect thereof, each JV Party agrees that it will not, and it shall cause, in the case of MNL, its representative directors, to not, interfere with or otherwise obstruct in any respect such action, pursuit, enforcement or recourse.

(b) Contractual Relationship Between Inotera and NTC and Any Joinder Party. With respect to any contract (including under the Fab Lease or the NTC Supply

Agreement) between Inotera and NTC, any Joinder Party or any of their Affiliates, MNL shall have the right to demand that Inotera, and shall have the right to cause Inotera to, take any action, pursue any right, enforce any obligation or seek recourse pursuant to or under such contract, including with respect to the assertion of any claim or cause of action for breach of contract against NTC, a Joinder Party or any of their Affiliates involved in such contractual relationship with Inotera. In respect thereof, each JV Party agrees that it will not, and it shall cause, in the case of NTC, its representative directors, to not, interfere with or otherwise obstruct in any respect such action, pursuit, enforcement or recourse.

Section 11.5 [***].

(a) If, after the Closing, [***] or any of their Affiliates is required [***] any of the [***] under the [***], then, subject to Section 11.5(b) below, [***] will [***].

(b) Upon the occurrence of [***], the JV Parties, the Joinder Parties and Micron shall, and shall use their best efforts to [***] the JV Parties, the Joinder Parties, Micron, MSA and Inotera [***] to the [***] they would have [***] the [***], including (i) arrangements that shall give [***] the [***] and other [***] related to the [***], and to [***] they are [***] under the [***] (ii) arrangements that cause the [***] of [***] that [***] to be [***] so that [***] are not [***] by the [***] of [***], (iii) arrangements with respect to [***], including [***] and [***] and [***], and (iv) arrangements with respect to other [***] including [***], on the one hand, and [***], on the other hand, the [***] held by [***] and the [***]. Notwithstanding Section 11.5(a), if the JV Parties, Joinder Parties, Micron, MSA and Inotera are [***] in a [***] (or such other [***] as the JV Parties and the Joinder Parties may agree in writing) following [***] shall have the right to [***] and the [***].

(c) To the extent that, as a result of [***] recover all or a portion of the [***] pursuant to the [***], such recovered [***] shall be [***] to be [***] by [***]. This Section 11.5(c) supersedes Section 4 of the letter agreement, dated [***], by and among MNL, NTC and Micron [***].

Section 11.6 Joinder Agreements. NTC and the Joinder Parties shall use best efforts to cause Inotera to take all actions necessary to effectuate the terms of the Joinder Agreements.

## ARTICLE 12

## DEADLOCK; EVENTS OF DEFAULT

Section 12.1 Deadlock. A "**Deadlock**" shall occur with respect to any matter for which an affirmative vote of the Board of Directors, or (a) by at least [***] until the earlier of the date on which (i) the [***] is greater than [***] and (ii) any [***] have been satisfied, and (b) thereafter, by at least [***] of the Shares represented at a Shareholders' Meeting, is required for approval, and such matter is not approved because, in the case of a vote of the Board of Directors, at least [***] fail to affirmatively vote to approve the matter and at least [***]

affirmatively vote to approve the matter, or, in the case of a vote of the shareholders (i) until the earlier of the date on which (A) the [***] is greater than [***] and (B) any [***] have been satisfied [***], and (ii) thereafter, such [***] of the Shares so represented is not obtained.

Section 12.2 Resolution of a Deadlock. If a Deadlock occurs, the JV Parties and the Joinder Parties shall:

(a) first, submit the matter that was the subject of the Deadlock to the president of each of Micron and NTC by providing notice of the Deadlock to such Persons, and the JV Parties and the Joinder Parties shall use reasonable efforts to cause such Persons to make a good faith effort to hold at least [***] in-person meetings between them to resolve the Deadlock within [***] days of their receipt of the notice of Deadlock;

(b) next, if the president of each of Micron and NTC are unable to resolve the Deadlock in the given [***] days, then submit the matter to the chairman of each of Micron and NTC for resolution, and the JV Parties and the Joinder Parties shall use reasonable efforts to cause such Persons to make a good faith effort to hold at least [***] in-person meeting between them to resolve the Deadlock within [***] days following the submission of the Deadlock to them;

(c) next, if the chairman of each of Micron and NTC are unable to resolve the Deadlock in the given [***] days, any JV Party may commence mediation by providing to ICDR and the other JV Parties a written request for mediation, setting forth the subject of the Deadlock and the relief requested. The JV Parties and the Joinder Parties will cooperate with ICDR and with one another in selecting a mediator from an ICDR panel of neutrals, and in scheduling the mediation proceedings to be held in [***] during the [***] days following the commencement of mediation. The JV Parties and the Joinder Parties covenant that they will participate in the mediation in good faith, and that MNL, Numonyx B.V. and MTAP together will bear one-half of its costs and NTC and the Joinder Parties together will bear the other half of its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the JV Parties or by any Joinder Party, by any of their respective agents, employees, experts and attorneys and by the mediator and any ICDR employees are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation or other proceeding involving any of the JV Parties or the Joinder Parties provided, that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. Any JV Party may seek equitable relief prior to the mediation to preserve the status quo pending the completion of that process. The provisions of this Section 12.2(c) may be enforced by any court of competent jurisdiction, and the JV Parties seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the JV Parties and/or Joinder Parties against whom enforcement is ordered.

Section 12.3 Buyout from Deadlock.

(a) If the JV Parties are unable to resolve the Deadlock through the procedures set forth in Section 12.2, MNL, Numonyx B.V. and MTAP, acting as a group, or NTC and the Joinder Parties, acting as a group, may, [***] after the completion of, or the expiration of such time allotted for, the mediation contemplated by Section 12.2(c), propose (such group of JV Parties and, if applicable, Joinder Parties, the "**Proposing JV Party**") to the other group of JV Parties and, if applicable, Joinder Parties (the "**Receiving JV Party**") in writing, [***]. Within [***] of receiving such proposal, the Receiving JV Party shall, by notice in writing to the Proposing JV Party, elect to either (i) purchase from the Proposing JV Party and its Subsidiaries all (but not less than all) of the Shares then owned by the Proposing JV Party and its Subsidiaries at a price equal to [***]; or (ii) sell to the Proposing JV Party all (but not less than all) of the Shares then owned by the Receiving JV Party and its Subsidiaries at a price equal to [***]; provided, that if in the case of subsection (i) or (ii) above such price (the "**Original Price**") is not permitted pursuant to Applicable Law of the ROC, the Original Price for the affected subsection or subsections will be automatically adjusted to the price that is closest to the Original Price and that is permissible pursuant to Applicable Law of the ROC; provided, further, that, if the Receiving JV Party fails to make such election within such [***] period, the Receiving JV Party shall be deemed to have elected to [***] the Proposing JV Party. Upon such election by the Receiving JV Party, the Proposing JV Party shall be obligated to sell or purchase, as the case may be, to or from the Receiving JV Party in accordance with this Section 12.3. Notwithstanding the foregoing provisions of this Section 12.3(a) to the contrary, none of NTC or the Joinder Parties may be the Proposing JV Party so long as MNL and its Affiliates are purchasing, are obligated to purchase or have the right to purchase from Inotera at least fifty percent (50%) of the Stack DRAM Products manufactured by Inotera in any Fiscal Year (a "**Blockage Condition**"). At such time as there no longer is a Blockage Condition, NTC and the Joinder Parties may be a Proposing JV Party, but only if such Deadlock remains in effect and the period described above in this Section 12.3(a) permits there to be a Proposing JV Party. Notwithstanding the foregoing provisions of this Section 12.3(a) to the contrary, if MNL, Numonyx B.V. or MTAP is the purchaser under this Section 12.3(a), MNL, Numonyx B.V. and MTAP shall have the option to either (i) purchase all of the Shares described above (the "**Full Purchase Election**") or (ii) purchase only such number of Shares as would result in the aggregate Equity Interest of NTC and the Joinder Parties immediately after such purchase and sale equaling [***] percent ([***]%) of the total outstanding Equity Interest (the "**Partial Purchase Election**"); provided, however, that in the case of a Partial Purchase Election made when the aggregate Equity Interest of NTC and the Joinder Parties is already equal to or less than [***]%, the Partial Purchase Election shall result in MNL, Numonyx B.V. and MTAP purchasing zero Shares. As used herein, the term "**Remainder Shares**" shall mean all of the Shares of NTC and the Joinder Parties that would have been purchased and sold had the Full Purchase Election been made that were not purchased and sold because the Partial Purchase Election was made. In the case of a Partial Purchase Election, MNL, Numonyx B.V. and MTAP shall have a continuing right (the "**Clean-up Option**"), exercisable at the option of, and at the time selected by, any of MNL, Numonyx B.V. or MTAP, by written notice to NTC, to purchase from NTC and the Joinder Parties all of the Remainder Shares and the [***] Subscription Shares, at a same price and on the same terms as such Remainder Shares would have been purchased had the Full

Purchase Election (rather than the Partial Purchase Election) been made, provided, however, that if such price is not permitted pursuant to Applicable Law of the ROC, the price shall be automatically adjusted to the price that is closest to such price and that is permissible pursuant to Applicable Law of the ROC; and provided, further, however, that if the [***] has not been [***] by the [***] that is [***] pursuant to the [***] shall be deemed to [***] it as of the [***] and shall [***] and the [***] all of the [***] at a [***] as such [***] would have been purchased had the Full Purchase Election (rather than the Partial Purchase Election) been made, provided, however, that if such price is not permitted pursuant to Applicable Law of the ROC, the price shall be automatically adjusted to the price that is closest to such price and that is permissible pursuant to Applicable Law of the ROC.

(b) The JV Parties and the Joinder Parties shall in good faith complete the sale and purchase transaction contemplated under Section 12.3(a) as soon as practicable, but in no event later than [***] days after the delivery of the Receiving JV Party's election. At the completion of such sale and purchase transaction, either the Proposing JV Party or the Receiving JV Party, as the case may be, shall pay the purchase price pursuant to Section 12.3(a) in cash by wire transfer of immediately available funds to an account designated in writing by such other JV Party against delivery by the Proposing JV Party or the Receiving JV Party, as the case may be, of (i) in the case that Shares are in book-entry (scripless) form, any and all instruments and documents necessary for the application to the TDCC to effect book-entry transfer of such Shares free and clear of any liens, claims, charges or encumbrances, or (ii) in the case that Shares are in physical certificated form, all the certificates representing all such Shares, free and clear of any liens, claims, charges or encumbrances duly endorsed for transfer and together with all necessary transfer documents.

Section 12.4 Event of Default. An "**Event of Default**" shall occur if (a) a JV Party or a Joinder Party breaches or fails to perform in any material respect any material obligation under this Agreement or a Joinder Agreement and (b) at the end of the Cure Period therefor such breach or failure remains uncured. If such breach or failure is by either MNL, Numonyx B.V. or MTAP, then MNL, Numonyx B.V. and MTAP shall be the "**Defaulting JV Parties**" and NTC and the Joinder Parties shall be the "**Non-Defaulting Parties**". If such breach or failure is by any of NTC or any Joinder Party, then NTC and the Joinder Parties shall be the "**Defaulting JV Parties**" and MNL, Numonyx B.V. and MTAP shall be the "**Non-Defaulting Parties**".

Section 12.5 Cure Period. Upon the breach or failure to perform an obligation under this Agreement by a JV Party or a Joinder Party, the Non-Defaulting JV Parties shall have the right to deliver to the Defaulting JV Parties a notice of default (a "**Notice of Default**"). The Notice of Default shall set forth the nature of the Defaulting JV Parties' breach or failure of performance. If the Defaulting JV Parties fail to cure the breach or failure within the Cure Period, the Non-Defaulting JV Parties shall be entitled to take such action as set forth in Section 12.6. For purposes hereof, "**Cure Period**" means a period commencing on the date that the Notice of Default is provided by the Non-Defaulting JV Parties and ending (a) [***] days after Notice of Default is so provided, or (b) in the case of any obligation (other than an obligation to

pay money) which cannot reasonably be cured within such [***] day period, such longer period not to exceed [***] days after the Notice of Default is so provided as is necessary to effect a cure of the Event of Default, so long as the Defaulting JV Parties diligently attempt to effect a cure throughout such period.

Section 12.6 Default Remedy.

(a) Upon the occurrence of an Event of Default, the Non-Defaulting JV Parties shall have the right, but not the obligation, by a notice delivered in writing to the Defaulting JV Parties not later than [***] after the expiration of the applicable Cure Period (the "Exercise Notice"), to require the Defaulting JV Parties to:

(i) purchase from the Non-Defaulting JV Parties all (but not less than all) of the Shares then owned by such Non-Defaulting JV Parties and their Subsidiaries for a purchase price equal to [***] of the [***] of such Shares on a per Share basis; or

(ii) sell to the Non-Defaulting JV Parties all (but not less than all) of the Shares then owned by the Defaulting JV Parties and their Subsidiaries for a purchase price equal to [***] of the [***] of such Shares on a per Share basis;

provided, that if in the case of subsection (i) or (ii) above, as applicable, such price (the "**Default Original Price**") is not permitted pursuant to Applicable Law of the ROC, the Default Original Price for the affected subsection or subsections will be automatically adjusted to the price that is closest to the Default Original Price and that is permissible pursuant to Applicable Law of the ROC.

(b) The JV Parties and the Joinder Parties shall in good faith complete the sale and purchase transaction contemplated under Section 12.6(a) as soon as practicable, but in no event later than 180 days after the determination of [***]. At the completion of such sale and purchase transaction, either the Defaulting JV Parties or the Non-Defaulting JV Parties, as the case may be, shall pay the purchase price pursuant to Section 12.6(a) in cash by wire transfer of immediately available funds to an account designated in writing by the JV Parties and/or Joinder Parties selling their Shares against delivery by the Non-Defaulting JV Parties or the Defaulting JV Parties, as the case may be, of (i) in the case that Shares are in book-entry (scripless) form, any and all instruments and documents necessary for the application to the TDCC to effect book-entry transfer of such Shares free and clear of any liens, claims, charges or encumbrances, or (ii) in the case that Shares are in physical certificated form, all the certificates representing all such Shares, free and clear of any liens, claims, charges or encumbrances duly endorsed for transfer and together with all necessary transfer documents.

(c) Notwithstanding anything to the contrary and in addition to the remedies provided under this Section 12.6, Inotera and the Non-Defaulting JV Parties may also pursue all other legal and equitable rights and remedies against the Defaulting JV Parties available to them.

The Defaulting JV Parties shall pay all costs, including reasonable attorneys' fees, incurred by Inotera and the Non-Defaulting JV Parties in pursuing any and all such legal remedies.

## ARTICLE 13

## BUYOUT

Section 13.1 Buyout Right.

(a) Exercise of Buyout Right. If at any time, (i) the aggregate Equity Interest of NTC and the Joinder Parties falls below five percent (5%) of the outstanding Shares (in such case, NTC and the Joinder Parties are each the "Non-compliant JV Party" and MNL, Numonyx B.V. and MTAP are the "Compliant JV Party"), or (ii) the aggregate Equity Interest of MNL, Numonyx B.V. and MTAP falls below five percent (5%) of the outstanding Shares (in such case, MNL, Numonyx B.V. and MTAP are the "Non-compliant JV Party" and NTC is the "Compliant JV Party"), then the Compliant JV Party shall have the right, but not the obligation, by notice to the Non-compliant JV Party in writing (such notice, the "Buyout Notice"), to purchase all (but not less than all) of the Shares then owned by the Non-compliant JV Party and its Subsidiaries (such Shares, the "Buyout Shares") at the Fair Value (unless such price (the "Buyout Original Price") is not permitted pursuant to Applicable Law of the ROC, in which case the Buyout Original Price will be automatically adjusted to the price that is closest to the Buyout Original Price and that is permissible pursuant to Applicable Law of the ROC); provided, however, that the [***] at such time is [***] and such Buyout Notice is delivered to the Non-compliant JV Party no later than [***] after such JV Party first becomes a Non-compliant JV Party. Notwithstanding the foregoing provisions of this Section 13.1(a) to the contrary, none of the Joinder Parties and NTC may issue a Buyout Notice so long as a Blockage Condition is then existing. At such time as there no longer is a Blockage Condition, the Joinder Parties and NTC may issue a Buyout Notice if the aggregate Equity Interest of MNL, Numonyx B.V. and MTAP is then below five percent (5%) of the outstanding Shares.

(b) Completion of Buyout.

(i) The JV Parties and the Joinder Parties shall in good faith complete the sale and purchase transaction contemplated under Section 13.1(a) as soon as practicable, but in no event later than [***] after delivery of the Buyout Notice.

(ii) At the completion of such sale and purchase transaction, the Compliant JV Party shall pay the purchase price pursuant to Section 13.1(a) in cash by wire transfer of immediately available funds to an account designated in writing by the Non-compliant JV Party against delivery by the Non-compliant JV Party of (1) in the case that Shares are in book-entry (scripless) form, any and all instruments and documents necessary for the application to the TDCC to effect book-entry transfer of such Shares free and clear of any liens, claims, charges or encumbrances, or (2) in the case that Shares are in physical certificated form, all the certificates representing all such Shares, free and clear of any liens, claims, charges or

encumbrances. Notwithstanding the foregoing, the Compliant JV Party may elect to deduct any amount owed by the Non-compliant JV Party to the Compliant JV Party from the purchase price payable by the Compliant JV Party pursuant to Section 13.1(a).

Section 13.2 Buyout Subsidiaries. In the event of a buyout of Shares as contemplated under Sections 9.3, 12.3, 12.6 and/or 13.1, the JV Parties and the Joinder Parties subject to the buyout of their Shares shall use their best efforts to transfer, prior to consummation of the proposed buyout, all of the Shares subject to the buyout under Section 9.3, 12.3, 12.6 or 13.1, as applicable, to wholly-owned Subsidiaries of such JV Parties and the Joinder Parties (the "**Buyout Subsidiaries**") that have no liabilities and hold no assets other than Shares subject to the buyout under Section 9.3, 12.3, 12.6 or 13.1, as applicable. If the Shares subject to the buyout under Section 9.3, 12.3, 12.6 or 13.1, as applicable, are transferred to the Buyout Subsidiaries, the JV Parties and the Joinder Parties acquiring such Shares shall have the right to acquire all of the outstanding equity interests of the Buyout Subsidiaries for the same price and on the same terms as such JV Parties and Joinder Parties would otherwise have acquired the Shares subject to the buyout under Section 9.3, 12.3, 12.6 or 13.1, as applicable.

## ARTICLE 14

## TERMINATION

Section 14.1 Effective Date. This Agreement is effective on the date hereof, and continue in force unless terminated in accordance with this Agreement.

Section 14.2 Termination. This Agreement shall terminate upon (a) the earlier of the Transfer of all of the Shares owned (i) by MNL, Numonyx B.V. and MTAP and their Affiliates to NTC and the Joinder Parties and/or their Affiliates in accordance with Section 12.3, 12.6 or 13.1, or (ii) by the Joinder Parties and NTC to MNL, Numonyx B.V. and MTAP and/or their Affiliates in accordance with Section 12.3 (as a result of a Full Purchase Election or the exercise of a Clean-up Option), 12.6 or 13.1 or (b) the breach by any JV Party of Section 9.1(a)(i), provided that the breaching JV Party does not cure such breach within sixty (60) days after receipt of notice from any other JV Party of an intent to terminate this Agreement pursuant to this Section 14.2(b); provided, that the following provisions shall survive termination of this Agreement: Sections 11.2, 11.5 and 14.2 and Article 15.

Section 14.3 Suspension. Upon the Transfer of less than all of the Shares owned by the Joinder Parties and NTC to MNL, Numonyx B.V. and MTAP and/or their Affiliates in accordance with Section 12.3, this Agreement shall not terminate but instead shall be suspended and treated for all purposes under this Agreement as if it has been terminated pursuant to Section 14.2 (a "**Suspension**").

## ARTICLE 15

## GENERAL PROVISIONS

Section 15.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given upon (a) transmitter's confirmation of a receipt of a facsimile transmission, (b) confirmation of delivery by a standard overnight or recognized international carrier, or (c) delivery in person, addressed at the following addresses (or at such other address for a JV Party as shall be specified by like notice):

if to NTC or, except as otherwise specified in the applicable Joinder Agreement, any Joinder Party:

Nanya Technology Corporation
Hwa-Ya Technology Park
669 Fuhsing 3 RD. Kueishan
Taoyuan, Taiwan, ROC
Attn: Head of Legal & IP Division
Facsimile: 886-3-396-2226

if to MNL, Numonyx B.V. or MTAP:

Micron Semiconductor B.V.
Naritaweg 165 Telestone 8
1043BW Amsterdam
The Netherlands
Attn: Managing Director
Facsimile: 020-5722650

with a mandatory copy to Micron:

Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attn: General Counsel
Facsimile: (208) 368-1309

Section 15.2 Waiver. The failure at any time of a JV Party to require performance by any other JV Party of any responsibility or obligation required by this Agreement or any Joinder Agreement shall in no way affect a JV Party's right to require such performance. The waiver by a JV Party of a breach of any provision of this Agreement or any Joinder Agreement by any JV

Party or Joinder Party shall not constitute a waiver by any other JV Party of such breach. The failure at any time of a JV Party to require performance by any other JV Party or Joinder Party of any responsibility or obligation required by this Agreement shall in no way affect the right of such JV Party to require such performance at any time thereafter, nor shall the waiver by a JV Party of a breach of any provision of this Agreement or any Joinder Agreement by any other JV Party or any Joinder Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

Section 15.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each JV Party and Joinder Party; provided, however, neither this Agreement nor any Joinder Agreement nor any right or obligation hereunder or thereunder may be assigned or delegated by any JV Party or Joinder Party in whole or in part to any other Person without the prior written consent of MNL and NTC. Any purported assignment in violation of the provisions of this Section 15.3 shall be null and void and have no effect.

Section 15.4 Amendment. Except as expressly provided by this Agreement, this Agreement may not be modified or amended except by a written instrument executed by, or on behalf of, each JV Party.

Section 15.5 Third Party Rights. Micron and MSA are express third party beneficiaries of Sections 11.1, 11.5, 11.6 and 15.13, and NCPC is an express third party beneficiary of Section 5.3. Except as set forth in the prior sentence, nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any Person, other than the JV Parties and, to the extent provided in a Joinder Agreement, the Joinder Party thereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

Section 15.6 Governing Law. This Agreement and the Joinder Agreements shall be governed by and construed in accordance with the laws of the ROC, without giving effect to its conflict of laws principles.

Section 15.7 Jurisdiction; Venue. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or any Joinder Agreement shall be brought in the Taipei District Court, located in Taipei, Taiwan, and each of the JV Parties and the Joinder Parties hereby consents and submits to the exclusive jurisdiction of such court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

Section 15.8 Headings. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

Section 15.9 Entire Agreement. This Agreement, together with the Appendices, Exhibits and Schedules hereto and the agreements (including the Master Agreement, the Joint Venture Documents and the Joinder Agreements) and instruments referred to herein, constitute the entire agreement of the JV Parties and the Joinder Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, between or among JV Parties and the Joinder Parties with respect to the subject matter hereof.

Section 15.10 Taxes and Expenses. Except as otherwise set forth in this Agreement or the Joinder Agreements, all taxes, fees and expenses incurred in connection with this Agreement and the Joinder Agreements and the transactions contemplated hereby and thereby shall be paid by the JV Party or Joinder Party incurring such taxes, fees and expenses.

Section 15.11 Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force and effect in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Law or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the JV Parties shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

Section 15.12 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Section 15.13 Confidential Information.

(a) To the extent they are parties thereto, the JV Parties shall abide by the terms of those certain Mutual Confidentiality Agreements dated as of the date hereof, (i) between Micron and Inotera, (ii) between NTC and Inotera, and (iii) between Micron and NTC, as they may be amended or replaced from time to time (collectively, the "**Mutual Confidentiality Agreements**"), and the Joinder Parties shall abide by the terms of Section 3.4 of the Master Agreement (the "**Confidentiality Covenant**" and, together with the Mutual Confidentiality Agreements, the "**Confidentiality Agreements**"), to the same extent as if such Joinder Parties were "New Parties" or "Receiving Parties" as defined in the Master Agreement, which agreements and obligations are incorporated herein by reference. The JV Parties and Joinder Parties agree that the Confidentiality Agreements shall govern the confidentiality, non-disclosure and non-use obligations between and among the JV Parties and the Joinder Parties respecting the information provided or disclosed in connection with this Agreement.

(b) The terms and conditions of this Agreement shall be considered "**Confidential Information**" under the Confidentiality Agreements for which each of Micron and NTC and the Joinder Parties are considered a "**Receiving Party**" or a "**Recipient**", as applicable, under the applicable Confidentiality Agreements. To the extent there is a conflict between this Agreement and any Confidentiality Agreement, the terms of the Confidentiality Agreements shall control.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first written above.

MICRON SEMICONDUCTOR B.V.

By: /s/ Thomas L. Laws, Jr.
Name: Thomas L. Laws, Jr.
Title: Managing Director A

By: /s/ A. Konijn
Name: A. Konijn
Title: Managing Director

NUMONYX HOLDINGS B.V.

By: /s/ Thomas L. Laws, Jr.

Name: Thomas L. Laws, Jr.

Title: Managing Director A

**THIS IS A SIGNATURE PAGE FOR THE JOINT VENTURE AGREEMENT ENTERED INTO BY AND AMONG MNL, NUMONYX B.V., MTAP, AND NTC**

MICRON TECHNOLOGY ASIA PACIFIC, INC.

By: /s/ Michael W. Bokan

Name: Michael W. Bokan

Title: President

NANYA TECHNOLOGY CORPORATION

By: /s/ Charles Kau

Name: Charles Kau

Title: President

**EXHIBIT 10.124**

**[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT**

**CONFIDENTIAL**

# FACILITATION AGREEMENT

This FACILITATION AGREEMENT (the "**Agreement**"), dated this 17th day of January, 2013, is made and entered into by and among MICRON SEMICONDUCTOR B.V., a private limited liability company organized under the laws of the Netherlands ("**MNL**"), NUMONYX HOLDINGS B.V., a private limited liability company organized under the laws of the Netherlands ("**Numonyx B.V.**"), MICRON TECHNOLOGY ASIA PACIFIC, INC., an Idaho corporation ("**MTAP**"), NANYA TECHNOLOGY CORPORATION (Nanya Technology Corporation [Translation from Chinese]), a company incorporated under the laws of the Republic of China ("**ROC**" or "**Taiwan**") ("**NTC**"), and INOTERA MEMORIES, INC. (Inotera Memories, Inc. [Translation from Chinese]), a company incorporated under the laws of the ROC ("**Inotera**").

## RECITALS

A. MNL, Numonyx B.V., MTAP and NTC have entered into that certain Joint Venture Agreement, dated of even date herewith (the "**JV Agreement**"), which sets forth certain agreements regarding the ownership, governance and operation of Inotera.

B. MNL, Numonyx B.V., MTAP and NTC desire Inotera to enter into this Agreement in order to fully effectuate the intent of the parties to the JV Agreement, and Inotera desires to do so to induce NTC and two Affiliates of MNL to enter into new supply agreements with Inotera.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, do hereby agree as follows:

1. Joint Venture Agreement. Inotera shall do, cause to be done, or otherwise facilitate any actions that, under the following provisions of the JV Agreement, either (x) the JV Parties or the Joinder Parties, as applicable, have agreed Inotera shall do or (y) the JV Parties or the Joinder Parties, as applicable, have agreed (through commercially reasonable efforts, best efforts or otherwise) to cause Inotera to do:

(a) Sections 2.1(b) and (c);

(b) Section 2.3 (but with respect to clause (b) of Section 2.3 only compliance with the provisions of the JV Agreement specifically referenced in this Section 1);

(c) Sections 5.1(e), 5.1(f)(iii), 5.1(g), 5.3(d) and (e), 5.4(a) - (d) and 5.5;

(d) Sections 7.1(a) (but subject to obtaining the required approval of the Board of Directors), 7.2, 7.3, 7.4 (solely with respect to the institution of safeguards to ensure compliance with all applicable competition or anti-trust laws) and 7.5;

(e) Sections 8.1 - 8.3;

(f) Article 10 (but with respect to Section 10.5, subject to obtaining the approvals of the Board of Directors and shareholders of Inotera required by Applicable Law); and

(g) Sections 11.1, 11.2, 11.4 and 11.5 (but with respect to Section 11.5, subject to obtaining any approvals of the shareholders of Inotera required by Applicable Law or the Articles of Incorporation of Inotera).

2. Purchase of Shares. Immediately prior to the issuance by Inotera of Shares or any other equity-linked securities of Inotera, NTC shall provide to Inotera a true and complete list of its Affiliates, the Joinder Parties and the Joinder Parties' Affiliates as of such date (the "**Listed Entities**"). Except as required by Applicable Law, Inotera shall not issue Shares or any other equity-linked security of Inotera, directly or indirectly, to any of the Listed Entities without the prior written consent of MNL.

3. Restrictions on [***] Employees. During the Employee Restriction Period, Inotera shall not, without the prior written consent of the applicable JV Party, (a) directly or indirectly [***], or make arrangements to [***] any Prohibited Employee that is [***], employed by a JV Party or any of their respective Subsidiaries (or, in the case where MNL is the JV Party, Micron or its Subsidiaries), or (b) directly or indirectly [***], or make arrangements [***], any Restricted Employee that is [***] employed by a JV Party or any of their respective Subsidiaries. Notwithstanding the foregoing, the restrictions in this Section 3 against [***] Prohibited Employees and Restricted Employees shall not apply with respect to [***] of any person whose employment was terminated by, or who has received a notice of termination or lay-off from, a JV Party or any of their respective Subsidiaries (or, in the case where MNL is the JV Party, Micron or its Subsidiaries).

4. General Provisions.

(a) Defined Terms. Capitalized terms used herein but not otherwise defined shall have the meaning ascribed to such terms in the JV Agreement.

(b) Notices. All notices and other communications hereunder shall be in writing and shall be deemed duly given upon (i) transmitter's confirmation of a receipt of a facsimile transmission, (ii) confirmation of delivery by a standard overnight or recognized international carrier, or (iii) delivery in person, addressed at the following addresses (or at such other address for a JV Party as shall be specified by like notice):

if to NTC:

Nanya Technology Corporation
Hwa-Ya Technology Park
669 Fuhsing 3 RD. Kueishan
Taoyuan, Taiwan, ROC
Attn: Legal department
Facsimile: 886-3-396-2226

if to MNL, Numonyx B.V. or MTAP:

Micron Semiconductor B.V.
Naritaweg 165 Telestone 8
1043BW Amsterdam
The Netherlands
Attn: Managing Director
Facsimile: 020-5722650

with a mandatory copy to Micron:

Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attn: General Counsel
Facsimile: (208) 368-1309

If to Inotera:

Inotera Memories, Inc.
667, Fuhsing 3rd Road
Hwa-Ya Technology Park
Kueishan, Taoyuan
Taiwan, R.O.C.
Attn: Head of Legal & IP Office
Facsimile: 886-3-327-2988 Ext. 3385

(c) Waiver. The failure at any time of a JV Party to require performance by Inotera of any responsibility or obligation required by this Agreement shall in no way affect a JV Party's right to require such performance. The waiver by a JV Party of a breach of any provision of this Agreement by Inotera shall not constitute a waiver by any other JV Party of such breach.

The failure at any time of a JV Party to require performance by Inotera of any responsibility or obligation required by this Agreement shall in no way affect the right of such JV Party to require such performance at any time thereafter, nor shall the waiver by a JV Party of a breach of any provision of this Agreement by Inotera constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligations itself.

(d) Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of Inotera; provided, however, neither this Agreement nor any right or obligation hereunder may be assigned or delegated by any party hereto in whole or in part to any other Person without the prior written consent of the nonassigning parties hereto. Any purported assignment in violation of the provisions of this Section 4(d) shall be null and void and have no effect.

(e) Amendment. Except as expressly provided by this Agreement, this Agreement may not be modified or amended except by a written instrument executed by, or on behalf of, each of the parties hereto.

(f) Third Party Rights. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any Person, other than the parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

(g) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the ROC, without giving effect to its conflict of laws principles.

(h) Jurisdiction; Venue. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be brought in the Taipei District Court, located in Taipei, Taiwan, and each of the parties hereto consents and submits to the exclusive jurisdiction of such court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

(i) Headings. The headings of the Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

(j) Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof.

(k) Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force and effect in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Law or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the parties hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

(l) Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first written above.

MICRON SEMICONDUCTOR B.V.

By: /s/ Thomas L. Laws, Jr.
Name: Thomas L. Laws, Jr.
Title: Managing Director A

By: /s/ A. Konijn
Name: A. Konijn
Title: Managing Director

NUMONYX HOLDINGS B.V.

By: /s/ Thomas L. Laws, Jr.

Name: Thomas L. Laws, Jr.

Title: Managing Director A

**[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT**

**CONFIDENTIAL**

MICRON TECHNOLOGY ASIA PACIFIC, INC.

By: /s/ Michael W. Bokan

Name: Michael W. Bokan

Title: President

**THIS IS A SIGNATURE PAGE FOR THE FACILITATION AGREEMENT ENTERED INTO BY AND AMONG MNL, NUMONYX B.V., MTAP, NTC AND INOTERA**

NANYA TECHNOLOGY CORPORATION

By: /s/ Charles Kau

Name: Charles Kau

Title: President

INOTERA MEMORIES, INC.

By: /s/ Pei-Ing Lee
Name: Pei-Ing Lee
Title: Supervisor

By: /s/ Lee Kok Choy
Name: Lee Kok Choy
Title: Supervisor

# MICRON GUARANTY AGREEMENT

This GUARANTY (this "**Guaranty**") is made and entered into as of the 17th day of January, 2013, by Micron Technology, Inc., a Delaware corporation ("**Guarantor**"), in favor of Nanya Technology Corporation (Nany Technology Corporation [Translation from Chinese]), a company incorporated under the laws of the ROC ("**NTC**"). Capitalized terms used in this Guaranty shall have the respective meanings ascribed to such terms in Article I or as otherwise provided in Section 1.2. All capitalized terms used in this Guaranty but not otherwise defined shall have the meanings ascribed to them in the Joint Venture Agreement, of even date herewith, among Micron Semiconductor B.V., a private limited liability company organized under the laws of the Netherlands ("**MNL**"), Numonyx Holdings B.V., a private limited liability company organized under the laws of the Netherlands ("**Numonyx B.V.**"), Micron Technology Asia Pacific, Inc., an Idaho corporation ("**MTAP**"), and NTC (the "**Joint Venture Agreement**").

## RECITALS

A. MNL, Numonyx B.V., MTAP and NTC are entering into the Joint Venture Agreement to set forth certain agreements regarding the ownership, governance and operation of Inotera Memories, Inc. (Inotera Memories, Inc. [Translation from Chinese]), a company incorporated under the laws of the ROC ("**Inotera**").

B. Guarantor is the direct or indirect owner of all the equity securities of MNL, Numonyx B.V. and MTAP and Guarantor will, as a consequence, benefit from the consummation of the transactions contemplated by the Joint Venture Agreement.

C. NTC is not willing to enter into the Joint Venture Agreement unless Guarantor agrees to be bound by the terms of this Guaranty.

D. Contemporaneous with the execution of the Joint Venture Agreement, Nan Ya Plastics is becoming a Joinder Party by entering into a Joinder Agreement with the parties to the Joint Venture Agreement and Guarantor (the "**Nan Ya Plastics Joinder Agreement**"), and from time to time Participating Affiliates or Participating Investors may become Joinder Parties, each by executing, delivering and entering into a Joinder Agreement with each of the parties to the Joint Venture Agreement and Guarantor.

E. The Joinder Parties are not willing to enter into the Joinder Agreements unless Guarantor agrees to be bound by the terms of this Guaranty.

In order to induce NTC to enter into the Joint Venture Agreement and the Joinder Parties to enter into the Joinder Agreements, Guarantor has agreed to execute and deliver to NTC and the Joinder Parties this Guaranty.

NOW THEREFORE, for good and valuable consideration, including the inducement of NTC to consummate the transactions contemplated by the Joint Venture Agreement, and other consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

## ARTICLE I. DEFINITIONS

Section 1.1 Defined Terms. For purposes of this Guaranty, the following terms will have the following meanings when used herein with initial capital letters:

"**Affiliate**" means, with respect to any specified Person, any other Person that directly or indirectly, including through one or more intermediaries, Controls, or is Controlled by, or is under common Control with such specified Person; and the term "**affiliated**" has a meaning correlative to the foregoing.

"**Applicable Law**" means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"**Beneficiary**" means NTC, and on and after the Trigger Date, collectively NTC and Joinder Parties.

"**Control**" means the power or authority, whether exercised or not, to direct the business, management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, which power or authority shall conclusively be presumed to exist upon possession of beneficial ownership or power to direct the vote of more than fifty percent (50%) of the votes entitled to be cast at a meeting of the members, shareholders or other equity holders of such Person or power to control the composition of a majority of the board of directors or like governing body of such Person; and the term "**Controlled**" has a meaning correlative to the foregoing.

"**Guarantor**" shall have the meaning set forth in the Preamble.

"**Guaranty**" shall have the meaning set forth in the Preamble.

"**Guaranty Obligations**" shall have the meaning set forth in Section 2.1.

"**Inotera**" shall have the meaning set forth in the Recitals.

"**Joinder Agreement**" means each of (i) the Joinder Agreement (as amended from time to time) entered into by Nan Ya Plastics, each of the parties to the Joint Venture Agreement and Guarantor as of the date of this Guaranty and (ii) each of the other Joinder Agreements (as amended from time to time) that have been duly executed, delivered and entered into by a Participating Affiliate or a Participating Investor with each of the parties to the Joint Venture Agreement and Guarantor, in substantially the form of the Joinder Agreement described in the foregoing clause (i).

"**Joinder Party**" means (i) Nan Ya Plastics, (ii) each Participating Affiliate that is party to a Joinder Agreement, and (iii) each Participating Investor that is party to a Joinder Agreement.

"**Joint Venture Agreement**" shall have the meaning set forth in the Preamble.

"**MNL**" shall have the meaning set forth in the Preamble.

"**MSA**" means Micron Semiconductor Asia Pte. Ltd., a private limited company organized under the laws of Singapore.

"**MTAP**" shall have the meaning set forth in the Preamble.

"**Nan Ya Plastics**" means Nan Ya Plastics Corporation, a company incorporated under the laws of the ROC.

"**NTC**" shall have the meaning set forth in the Preamble.

"**Numonyx B.V.**" shall have the meaning set forth in the Preamble.

"**Participating Affiliate**" means any Affiliate of Nan Ya Plastics (other than NTC) that has duly executed, delivered and entered into a Joinder Agreement.

"**Participating Investor**" means any Person other than Nan Ya Plastics, NTC, Guarantor or any of their respective Affiliates that is reasonably acceptable to Guarantor and has duly executed, delivered and entered into a Joinder Agreement.

"**Party**" means Guarantor or Beneficiary individually, and "**Parties**" means Guarantor and Beneficiary collectively.

"**Person**" means any natural person, corporation, joint stock company, limited liability company, association, partnership, firm, joint venture, organization, business, trust, estate or any other entity or organization of any kind or character.

"**ROC**" means the Republic of China.

"**Trigger Date**" shall have the meaning set forth in the Nan Ya Plastics Joinder Agreement.

Section 1.2 Certain Interpretative Matters.

(a) Unless the context requires otherwise, (1) all references to Sections, Articles or Recitals are to Sections, Articles or Recitals of this Guaranty, (2) words in the singular include the plural and vice versa, (3) the term "**including**" means "including without limitation," and (4) the terms "**herein**," "**hereof**," "**hereunder**" and words of similar import shall mean references to this Guaranty as a whole and not to any individual section or portion hereof. All references to "**day**" or "**days**" mean calendar days.

(b) No provision of this Guaranty will be interpreted in favor of, or against, either Party by reason of the extent to which (1) such Party or its counsel participated in the drafting thereof, or (2) such provision is inconsistent with any prior draft of this Guaranty or such provision.

## ARTICLE II. GUARANTY

Section 2.1 Guaranty Obligations. Subject to the terms and conditions set forth in this Guaranty, Guarantor hereby irrevocably and unconditionally guarantees the prompt performance by MNL, Numonyx B.V. and MTAP of their respective obligations under the Joint Venture Agreement (the "**Guaranty Obligations**").

Section 2.2 Nature of Guaranty. Insofar as the payment by MNL, Numonyx B.V. or MTAP of any sums of money to Inotera or Beneficiary is involved, this Guaranty is a guarantee of payment and not of collection. Should Inotera or Beneficiary be obligated by any bankruptcy or other Applicable Law to repay to Guarantor, MNL, Numonyx B.V., MTAP or any trustee, receiver or other representative of any of them, any amounts previously paid, this Guaranty will be reinstated to the amount of such repayments.

Section 2.3 Independent Obligations. Except as specifically provided for in this Guaranty, the obligations of Guarantor under this Guaranty are independent of the obligations of MNL, Numonyx B.V. and MTAP under the Joint Venture Agreement. Upon any default by MNL, Numonyx B.V. or MTAP in the performance of the Guaranty Obligations, Beneficiary may immediately proceed against Guarantor hereunder without bringing action against or joining MNL, Numonyx B.V. or MTAP.

Section 2.4 Defenses to Enforcement. It will not be a defense to the enforcement of this Guaranty that the execution and delivery of the Joint Venture Agreement by MNL, Numonyx B.V. or MTAP was unauthorized or otherwise invalid, or that any of the obligations of MNL, Numonyx B.V. or MTAP thereunder are otherwise unenforceable. Guarantor intends this Guaranty to apply in respect of the obligations of MNL, Numonyx B.V. and MTAP that would arise under the Joint Venture Agreement if all of the provisions thereof were enforceable against MNL, Numonyx B.V. and MTAP in accordance with their terms.

Section 2.5 Action with Respect to the Guaranty Obligations. Guarantor agrees that the obligations of Guarantor hereunder are unconditional and irrevocable under the circumstances set forth in the Joint Venture Agreement, subject to the terms and conditions of this Guaranty, and will not be impaired, released, terminated, discharged or otherwise affected except by performance thereof in full. Without limiting the generality of the foregoing, such obligations of Guarantor will not be affected by any of the following:

(a) any modification or amendment of, or addition or supplement to, the Joint Venture Agreement agreed to in writing by Guarantor or MNL, Numonyx B.V. or MTAP unless also agreed to in writing by Beneficiary;

(b) any exercise or non-exercise of any right, power or remedy under, or in respect of, the Joint Venture Agreement;

(c) any waiver, consent, release, extension, indulgence or other action, inaction or omission under, or in respect of, the Joint Venture Agreement, unless also agreed to in writing by Beneficiary;

(d) any insolvency, bankruptcy or similar proceeding involving or affecting MNL, Numonyx B.V. or MTAP or any liquidation or dissolution of MNL, Numonyx B.V. or MTAP; or

(e) any failure of MNL, Numonyx B.V. and MTAP to comply with any of the terms or conditions of the Joint Venture Agreement.

Section 2.6 Delays; Waivers. No delay by Beneficiary in exercising any right, power or privilege under this Guaranty or failure to exercise the same will constitute a waiver or otherwise affect such right, power or privilege, nor will any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No notice to or demand on Guarantor will be deemed to be a waiver of (a) any obligation of MNL, Numonyx B.V. or MTAP or (b) any right of Beneficiary to take any further action or exercise any rights under this Guaranty or the Joint Venture Agreement.

Section 2.7 Defenses. Notwithstanding the foregoing, nothing in this Guaranty will restrict Guarantor from raising the defense of prior payment or performance by MNL, Numonyx B.V. or MTAP of the obligations which Guarantor may be called upon to pay or perform under this Guaranty or the defense (other than a defense referred to in Section 2.4) that there is no obligation on the part of MNL, Numonyx B.V. or MTAP with respect to the matter claimed to be in default under the Joint Venture Agreement.

Section 2.8 Representations and Warranties. Guarantor hereby represents and warrants to Beneficiary that:

(a) Guarantor owns, directly or indirectly, all of the equity securities of MNL, Numonyx B.V. and MTAP;

(b) Guarantor has the authority, capacity and power to execute and deliver this Guaranty and to consummate the transactions contemplated hereby;

(c) this Guaranty constitutes the valid and binding obligation of Guarantor and is enforceable against Guarantor in accordance with its terms; and

(d) neither the execution and delivery by Guarantor of this Guaranty nor the performance by Guarantor of the transactions contemplated hereby will violate, conflict with or constitute a default under (1) any Applicable Law or other law to which either Guarantor or any of its assets is subject, or (2) any contract to which Guarantor is a party or is bound, except where such conflict, violation, default, termination, cancellation or acceleration would not materially impair the ability of Guarantor to perform its obligations under this Guaranty.

## ARTICLE III. MISCELLANEOUS

Section 3.1 Entire Agreement. This Guaranty constitutes the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements and undertakings, written and oral, between the Parties with respect to the subject matter hereof.

Section 3.2 Notices. All notices and other communications pursuant to this Guaranty shall be in writing and shall be deemed duly given upon (i) transmitter's confirmation of a receipt of a facsimile transmission, (ii) confirmation of delivery by a standard overnight or recognized international carrier, or (iii) delivery in person, addressed at the following addresses (or at such other address for a party hereto as shall be specified by like notice):

(1) if to Beneficiary:

Nanya Technology Corporation
Hwa-Ya Technology Park 669
Fuhsing 3 RD. Kueishan
Taoyuan, Taiwan, ROC
Attn: Legal department
Facsimile: 886-3-396-2226

(2) if to Guarantor:

Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attn: General Counsel
Facsimile: (208) 368-1309

Section 3.3 Amendments. This Guaranty may not be modified or amended except by a written instrument executed by, or on behalf of, each of the Parties.

Section 3.4 Waivers. The failure at any time of a Party to require performance by the other Party of any responsibility or obligation required by this Guaranty shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Guaranty by the other Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself. The rights and remedies herein provided will be cumulative and not exclusive of any rights or remedies provided by law.

Section 3.5 Choice of Law. This Guaranty shall be governed by and construed in accordance with the laws of the ROC, without giving effect to its conflict of laws principles.

Section 3.6 Jurisdiction; Venue. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Guaranty shall be brought in the Taipei District Court, located in Taipei, Taiwan, and each of the Parties consents and submits to the exclusive jurisdiction of such court (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

Section 3.7 Counterparts. This Guaranty may be executed in two counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Section 3.8 Headings. The headings of the Articles and Sections in this Guaranty are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

Section 3.9 Severability. Should any provision of this Guaranty be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Guaranty shall remain in full force and effect in all other respects. Should any provision of this Guaranty be or become ineffective because of changes in Applicable Law or interpretations thereof, or should this Guaranty fail to include a provision that is required as a matter of law, the validity of the other provisions of this Guaranty shall not be affected thereby. If any of such circumstances arise, the Parties shall negotiate in good faith appropriate modifications to this Guaranty to reflect those changes that are required by Applicable Law.

Section 3.10 Third Party Rights. The Joinder Parties are express third party beneficiaries under this Guaranty. Except as set forth in the prior sentence, nothing in this Guaranty, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any Person, other than the Parties, any legal or equitable right, remedy or claim under or in respect of this Guaranty or any covenant, condition or other provision contained herein.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Guaranty has been executed and delivered as of the date first written above.

**NANYA TECHNOLOGY CORPORATION**

By: /s/ Charles Kau
Name: Charles Kau
Title: President

**THIS IS A SIGNATURE PAGE FOR THE MICRON GUARANTY AGREEMENT ENTERED INTO BY AND BETWEEN MICRON AND NTC**

**MICRON TECHNOLOGY, INC.**

By: /s/ Michael W. Sadler
Name:
Title:

**THIS IS A SIGNATURE PAGE FOR THE MICRON GUARANTY AGREEMENT ENTERED INTO BY AND BETWEEN MICRON AND NTC**

**[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT**



# TECHNOLOGY TRANSFER AND LICENSE OPTION AGREEMENT FOR 20NM PROCESS NODE

This **TECHNOLOGY TRANSFER AND LICENSE OPTION AGREEMENT FOR 20NM PROCESS NODE** (this "**Agreement**"), is made and entered into as of this 17th day of January, 2013, by and between Micron Technology, Inc., a Delaware corporation ("**Micron**"), and Nanya Technology Corporation (Nanya Technology Corporation [Translation from Chinese]), a company incorporated under the laws of the Republic of China ("**NTC**"). (Micron and NTC are referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**").

## RECITALS

A. Micron is developing and/or has developed technology for a 20nm Process Node for the manufacture of DRAM Products.

B. NTC desires to receive an option to have such technology transferred and licensed to NTC for its use in the manufacture of DRAM Products.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, the Parties, intending to be legally bound, hereby agree as follows.

## ARTICLE 1

## DEFINITIONS; CERTAIN INTERPRETATIVE MATTERS

1.1 Definitions.

"**Adjusted Revenues**" means (a) with respect to [***], the difference of A minus B, wherein "A" equals the [***] from the [***] of the [***], and "B" equals [***] associated with [***], if any; *provided, however,* that Adjusted Revenues (i) shall not include any Foundry Customer Adjusted Revenues, and (ii) cannot be less than zero; and (b) with respect to [***], (x) the difference of C minus D, wherein "C" equals the [***] from the [***] of [***] and "D" equals the [***] associated with [***], multiplied by (y) the ratio of "E" divided by "F", wherein "E" equals the number of [***] and "F" equals the [***]; *provided, however,* that Adjusted Revenues cannot be less than zero.

"**Affiliate**" means, with respect to any specified Person, any other Person that directly or indirectly, including through one or more intermediaries, controls, or is controlled by, or is under common control with such specified Person; and the term "**affiliated**" has a meaning correlative to the foregoing.

"**Agreement**" shall have the meaning set forth in the preamble to this Agreement.

"**Applicable Law**" means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"**BEOL Costs**" means the back-end assembly (including module and packaging) and test costs of NTC incurred after Probe Testing of the DRAM wafer from which such DRAM Product is made.

"**Business Day**" means a day that is not a Saturday, Sunday, or statutory holiday in the state of Idaho or in Taiwan.

"**Change of Control**" means, with respect to a Party: (i) any Third Party becoming the beneficial owner of securities of such Party representing more than fifty percent (50%) of the total of all then outstanding voting securities; (ii) a merger or consolidation of such Party with or into a Third Party, other than a merger or consolidation that would result in the holders of the voting securities immediately prior thereto holding securities that represent immediately after such merger or consolidation more than fifty percent (50%) of the total combined voting power of the entity that survives such merger or consolidation or the parent of the entity that survives such merger or consolidation; or (iii) the sale or disposition of all or substantially all of the assets of such Party to a Third Party wherein the holders of such Party's outstanding voting securities immediately before such sale do not, immediately after such sale, own or control (directly or indirectly) equity representing a majority of the outstanding voting securities of such Third Party.

"**Confidential Information**" shall have the meaning ascribed thereto in the Micron-NTC Mutual NDA.

"**Control**" (whether capitalized or not) means the power or authority, whether exercised or not, to direct the business, management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, which power or authority shall conclusively be presumed to exist upon possession of beneficial ownership or power to direct the vote of more than fifty percent (50%) of the votes entitled to be cast at a meeting of the members, shareholders or other equity holders of such Person or power to control the composition of a majority of the board of directors or like governing body of such Person; and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Controlled Facility**" of a company means (i) a wafer fabrication facility owned by such company, (ii) a wafer fabrication facility owned by an entity that is Controlled by such company, and/or (iii) a wafer fabrication facility for which such company has a contractual right to receive at least [***] percent ([***]%) of the output of such wafer fabrication facility for at least [***] consecutive months.

"**Credit**" means the sum of [***] subject to reduction as such sum is applied to the [***] obligations of [***] in accordance with [***].

"**Density**" means the physical density of (i.e., total number of bits that can be stored in) a DRAM Product.

"**Designee**" shall have the meaning ascribed thereto in Section 3.1.

"**DRAM**" means dynamic random access memory cells that function by using a capacitor arrayed predominantly above the semiconductor substrate.

"**DRAM Design**" means the particular DRAM Product and corresponding design components, materials, and information specified in Schedule 2 and configured to serve as the transfer vehicle for the transfer of the Licensed Node from Micron to NTC.

"**DRAM Module**" means one or more DRAM Products in a package or module (whether as part of a SIMM, DIMM, multi-chip package, memory card or other memory module or package).

"**DRAM Product**" means any memory device comprising DRAM, whether in die or wafer form, manufactured by using the Licensed Node that implements the Transferred Technology licensed hereunder.

"**Effective Date**" means January 1, 2013.

"**Elpida**" means Elpida Memory, Inc., a corporation organized and existing under the laws of Japan.

"**Exercise Date**" shall have the meaning ascribed thereto in Section 2.1(b) of this Agreement.

"**Exercise Notice**" shall have the meaning ascribed thereto in Section 2.1(b) of this Agreement.

"**[***]**" shall have the meaning ascribed thereto in Section 3.4 of this Agreement.

"**Force Majeure Event**" means the occurrence of an event or circumstance beyond the reasonable control of a Party and includes, without limitation, (a) explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; (c) acts of federal, state, local or foreign Governmental Entity; (d) labor disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or unlawful; (e) failures or fluctuations in electrical power or telecommunications service or equipment; and (f) delays caused by the other Party or third-party nonperformance (except for delays caused by a Party's Contractors, subcontractors or agents).

"**Foundry Customer**" means a Third Party customer for DRAM Products, the [***] by the [***] to the [***] by a [***]:

(a) such customer:

(i) does not [***] DRAM Products in any [***] and does not develop any [***] for use in the [***]; and

(ii) is not a [***] in a [***] Micron or any of Micron's Affiliates (except where such customer is a [***] in a [***] Micron or any of Micron's Affiliates [***]; and

(b) all DRAM Products to [***]:

(i) have a [***] that is [***] (wherein a [***] is the [***] of the [***] with respect to a [***], so that [***] the [***] for the relevant [***], and

(ii) are not [***] that has been in [***] for [***] after [***].

"**Foundry Customer Adjusted Revenues**" means the difference of A minus B, wherein "A" equals the [***] for a [***]; and "B" equals the [***] if any. Foundry Customer Adjusted Revenues includes Foundry Customer Special Adjusted Revenues and Foundry Customer Other Adjusted Revenues.

"**Foundry Customer Other Adjusted Revenues**" means Foundry Customer Adjusted Revenues less Foundry Customer Special Adjusted Revenues.

"**Foundry Customer Products**" means DRAM Products manufactured by NTC for a Foundry Customer where such products are provided to such Foundry Customer for resale by or on behalf of that Foundry Customer or for internal use by that Foundry Customer.

"**Foundry Customer Special Adjusted Revenues**" means the difference of A minus B, wherein "A" equals the [***] received from the [***] for a [***] that has a [***] that is [***] (wherein a [***] is the [***] of the [***] with respect to a [***] so that [***] the [***] for the relevant [***]; and "B" equals the [***] associated with the such [***], if any.

"**GAAP**" means, with respect to Micron, United States generally accepted accounting principles, and with respect to NTC, Republic of China generally accepted accounting principles, in each case, as consistently applied by the Party for all periods at issue.

"**Governmental Entity**" means any governmental authority or entity, including any agency, board, bureau, commission, court, municipality, department, subdivision or instrumentality thereof.

"**Gross Revenues**" means, with respect to a DRAM Product or DRAM Module, the gross proceeds actually received by NTC or its Affiliate for the sale or other transfer of such DRAM Product or DRAM Module to a Third Party that is not an Affiliate, less any credits, discounts, returns and rebates actually applied or allowed or refunds actually given with respect to such DRAM Product or DRAM Module; *provided, however*, that Gross Revenues cannot be less than zero.

"**IMI**" means Inotera Memories, Inc. (Inotera Memories, Inc. [Translation from Chinese]), a company incorporated under the laws of the Republic of China.

"**Intel Confidential Information**" means information that (i) is developed by Micron and/or Intel Corporation under or in connection with a joint development agreement between Micron and Intel Corporation, and/or (ii) otherwise relates to IM Flash Technologies, LLC, and is subject to a confidentiality obligation between or among Micron and Intel Corporation or any of their respective Affiliates.

"**Internal Qualification**" means, with respect to a particular Process Node, the point in time at which Micron, together with its Affiliates, has used such Process Node to commercially produce more than [***] DRAM wafers per week for at least [***] consecutive weeks, provided that the following shall not be considered commercially produced wafers: (i) any DRAM wafers manufactured in Micron's R&D fabrication facility; (ii) any DRAM wafers that are engineering samples or experimental products; and (iii) any DRAM wafers that Micron and/or its Affiliates divert to a distribution channel for reduced-specification products (e.g., SpecTek).

"**IP Rights**" means copyrights, rights in trade secrets, Mask Work Rights and pending applications or registrations of any of the foregoing anywhere in the world. The term "IP Rights" does not include any Patent Rights or rights in trademarks.

"**Joint Venture Documents**" means (i) the Master Agreement, (ii) the documents, agreements and instruments referred to in Articles 5 and 7 of such Master Agreement, (iii) the Omnibus IP Agreement, dated as of the date hereof, by and between the Parties, and (iv) the documents, agreements and instruments referred to in Articles II and III of the Omnibus IP Agreement.

"**Licensed Node**" means the next Primary Process Node to be Internally Qualified by Micron after the Effective Date (also known as the 100 Series Process Node), such Process Node configured for an average half pitch of approximately twenty (20) nanometers (nm).

"**Mainstream DRAM Product**" means, for a [***], the particular DRAM Product, manufactured on the Licensed Node by [***], of which [***] the [***] by unit [***], which are manufactured on the Licensed Node.

"**Mask Work Rights**" means rights under the United States Semiconductor Chip Protection Act of 1984, as amended from time to time, or under any similar equivalent laws in countries other than the United States.

"**Master Agreement**" means that certain Master Agreement, dated as of the date hereof, among Micron, MNL, Numonyx B.V., MSA, MTT, NTC, and IMI.

"**Memory Product**" means one or more integrated circuits, printed circuit boards, multi-chip packages or other assemblies with which such integrated circuits are attached or otherwise associated that are designed, developed, marketed or used primarily for storing digital information including, for example and without limitation, any DRAM, NAND Flash, NOR, PCM, dynamic, static, volatile, low volatility or non-volatile memory, whether as discrete integrated circuits, or as part of a SIMM, DIMM, multi-chip package, memory card (e.g., compact flash card, SD card, etc.) or other memory module or package.

"**Micron**" shall have the meaning set forth in the preamble to this Agreement.

"**Micron Competitor**" means (a) [***], and any Subsidiaries of the companies set forth above; (b) any successor-in-interest of any of the companies referenced in (a) above and any successors to all or substantially all of their respective Memory Products businesses; (c) any Affiliate of any company set forth in (a) above; or (d) a company that uses its Controlled Facility to manufacture Memory Products in wafer form and that derives (either on a consolidated or standalone basis) at least [***] percent ([***]%) of its revenue from the manufacture or sale of Memory Products (based on the last fiscal year of such revenue).

"**Micron IP Royalties**" mean any royalties owed pursuant to Section 4.2.

"**Micron-NTC Mutual NDA**" means the Micron-NTC Mutual Nondisclosure Agreement entered into by and between Micron and NTC on even date herewith.

"**MNL**" means Micron Semiconductor B.V., a private limited liability company organized under the laws of the Netherlands.

"**MSA**" means Micron Semiconductor Asia Pte. Ltd., a private limited company organized under the laws of Singapore.

"**MTT**" means Micron Technology Asia Pacific, Inc., an Idaho corporation.

"**Nan Ya Plastics**" means Nan Ya Plastics Corporation, a company incorporated under the laws of the ROC.

"**New Finance Agreement**" means that certain New Finance Agreement, dated as of the date hereof, by and among Micron, MNL, Numonyx B.V., MSA, MTT, IMI and Nan Ya Plastics.

"**NTC**" shall have the meaning set forth in the preamble to this Agreement.

"**NTC Design Contractor**" means a Third Party engaged by NTC to develop designs for [***] to be manufactured at the NTC Qualified Fab using the Licensed Node [***] such Third Party is not a [***] in a [***] Micron or any of Micron's Affiliates (except where such Third Party is a [***] in a [***] Micron or any of Micron's Affiliates [***].

"**NTC Process Contractor**" means a Third Party engaged by NTC to develop process technology solely for use by NTC at the NTC Qualified Fab [***] such Third Party is not a [***] in a [***] Micron or any of Micron's Affiliates (except where such Third Party is a [***] in a [***] Micron or any of Micron's Affiliates [***].

"**NTC Products**" means DRAM Products and/or DRAM Modules the design for which (i) is owned by NTC, either solely or jointly with Micron, or (ii) is licensed by Micron to NTC pursuant to this Agreement.

"**NTC Qualified Fab**" means NTC's semiconductor manufacturing facility located at No. 98 Nanlin Rd., Taishan District, New Taipei City, Taiwan, ROC (i.e., NTC's Fab 3A) but only for so long as (i) such facility is [***] and (ii) no other [***] has a [***] or [***], directly or indirectly [***] any of the [***] in such facility. For purposes of this definition, [***] shall not be considered the type of [***] described in subsection (ii) above.

"**Numonyx B.V.**" means Numonyx Holdings B.V., a private limited liability company organized under the laws of the Netherlands.

"**OEM**" shall have the meaning ascribed thereto in Section 4.2(c) of this Agreement.

"**Option**" shall have the meaning ascribed thereto in Section 2.1(a) of this Agreement.

"**Option Period**" shall have the meaning ascribed thereto in Section 2.1(a) of this Agreement.

"**Party**" or "**Parties**" shall have the meaning set forth in the preamble to this Agreement.

"**Patent Rights**" means all rights associated with any and all issued and unexpired patents and pending patent applications in any country in the world, together with any and all divisionals, continuations, continuations-in-part, reissues, reexaminations, extensions, foreign counterparts or equivalents of any of the foregoing, wherever and whenever existing.

"**Person**" means any natural person, corporation, joint stock company, limited liability company, association, partnership, firm, joint venture, organization, business, trust, estate or any other entity or organization of any kind or character.

"**Primary Process Node**" means a generation of DRAM manufacturing process technology that results in substantial manufacturing efficiencies through either a reduction in the minimum repeatable half pitch of a device (minimum physical feature size or line width) relative to the prior generation of such technology (e.g., the 42nm Process Node or the 30nm Process Node, etc.) or a change in memory cell architecture (e.g., $4F^2$ and $6F^2$ cells).

"**Probe Testing**" means testing, using a wafer test program as set forth in the applicable specifications, of a wafer that has completed all processing steps deemed necessary to complete the creation of the desired DRAM integrated circuits in the die on such wafer, the purpose of which test is to determine how many and which of the die meet the applicable criteria for such die set forth in the specifications.

"**Process Node**" means a collection of process technology and equipment that enables the production of semiconductor wafers for a particular minimum repeatable half pitch of a device (minimum physical feature size or line width) and often designated by the size of such pitch (*e.g.*, the 20nm Process Node).

"**Qualification Notice**" means a written notice from Micron to NTC conspicuously labeled as "Qualification Notice" and indicating that Micron has achieved Internal Qualification of the Licensed Node.

"**Recoverable Taxes**" shall have the meaning set forth in Section 4.7(a).

"**ROC**" means the Republic of China.

"**Software**" means computer program instruction code, whether in human-readable source code form, machine-executable binary form, firmware, scripts, interpretive text, or otherwise. The term "Software" does not include databases and other information stored in electronic form, other than executable instruction codes or source code that is intended to be compiled into executable instruction codes.

"**Subsidiary**" means, with respect to any specified Person, any other Person that, directly or indirectly, including through one or more intermediaries, is Controlled by such specified Person.

"**Tax**" or "**Taxes**" means any federal, state, local or foreign net income, gross income, gross receipts, sales, use ad valorem, transfer, franchise, profits, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, customs, duties or other type of fiscal levy and all other taxes, governmental fees, registration fees, assessments or charges of any kind whatsoever, together with any interest and penalties, additions to tax or additional amounts imposed or assessed with respect thereto.

"**Taxing Authority**" means any Governmental Entity exercising any authority to impose, regulate or administer the imposition of Taxes.

"**Third Party**" means any Person other than NTC or Micron.

"**Transfer Fee**" shall have the meaning ascribed thereto in Section 4.1 of this Agreement.

"**Transferred Technology**" means the information and deliverables described on Schedule 1 for the Licensed Node developed by Micron for the manufacture of DRAM Products and the information and deliverables described on Schedule 2 for the DRAM Design identified thereon developed by Micron as of the Exercise Date, excluding any of the foregoing that cannot be shared with NTC without further permission or consent of, further payment to, or breach of agreement with, any Third Party.

"**Trigger Date**" shall have the following meaning:

(c) in the event that [***] any [***] of the [***], "Trigger Date" shall mean the later of (i) the date on which Micron's [***] (i.e., [***]), and (ii) the date on which the Qualification Notice is delivered to NTC; or

(d) in the event that [***] any [***] of the [***], "Trigger Date" shall mean the date on which the Qualification Notice is delivered to NTC.

"**TTLA Agreements**" means (a) the Technology Transfer and License Agreement for 68-50 nm Process Nodes dated April 21, 2008, as amended by Amendment No. 1 dated April 9, 2010, between the Parties, as may be amended from time to time, and/or (b) the Second Amended and Restated Technology Transfer and License Agreement effective April 9, 2010, between the Parties, as may be amended from time to time.

1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (1) all references to Sections, Articles, Exhibits, Appendices or Schedules are to Sections, Articles, Exhibits, Appendices or Schedules of or to this Agreement; (2) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with GAAP; (3) words in the singular include the plural and vice versa; (4) the term "**including**" means "including without limitation"; and (5) the terms "**herein**," "**hereof**," "**hereunder**" and words of similar import shall mean references to this Agreement as a whole and not to any individual section or portion hereof. Unless otherwise denoted, all references to $ or dollar amounts will be to lawful currency of the United States of America. All references to "**day**" or "**days**" will mean calendar days.

(b) No provision of this Agreement will be interpreted in favor of, or against, either Party by reason of the extent to which (1) such Party or its counsel participated in the drafting thereof or (2) any such provision is inconsistent with any prior draft of this Agreement or such provision.

## ARTICLE 2

## OPTION; LICENSE; RESTRICTIONS

2.1 Option.

(a) Subject to Section 2.1(c), from the Trigger Date until the date that is [***] after the Trigger Date (the "**Option Period**"), NTC shall have the right, but not the obligation, to obtain the license rights set forth in Section 2.2 (the "**Option**").

(b) NTC may only exercise the Option by providing to Micron, only during the Option Period, a written notice indicating NTC's decision to exercise the Option (the "**Exercise Notice**") and full payment of the Transfer Fee. Subject to NTC exercising the Option in accordance with this Section 2.1, NTC shall be granted the license rights set forth in Section 2.2, automatically and without any further action, upon the later of (i) Micron's receipt of the Exercise Notice and (ii) NTC's payment of the Transfer Fee to Micron (such later date referred to herein as the "**Exercise Date**").

(c) Notwithstanding anything to the contrary in this Agreement, in the event that [***] any [***] of the [***] of [***] is not [***] within two (2) years after the Effective Date, this Agreement shall automatically terminate and NTC shall have no right under this Agreement to exercise the Option and/or to obtain the license rights set forth in Section 2.2. Subject to the foregoing, in the event that this Agreement is terminated pursuant to this Section 2.1(c), Micron and NTC shall engage in good faith discussions with each other [***] regarding whether and under what terms [***] may [***] to [***] related to the [***].

(d) Micron shall provide the Qualification Notice to NTC promptly after the later of the date on which Micron achieves Internal Qualification of the Licensed Node.

2.2 License. Subject to the exercise of the Option by NTC in accordance with Section 2.1 and subject to the terms and conditions of this Agreement, Micron grants to NTC a [***], royalty-bearing (subject to Section 4.2(d)) license under Micron's [***] in the [***]:

(a) to [***] the [***], only in [***], for the purpose of [***] and/or [***] and/or [***];

(b) to [***] and/or [***] in the [***] using the [***]; and

(c) to [***] of the [***] as reasonably necessary for the purpose of [***], provided that any such [***] shall be deemed to be [***].

2.3 Restrictions.

(a) NTC shall not [***] other than the [***]. If NTC properly exercises the Option, NTC shall have the rights set forth Section 2.2, but only if and for so long as the [***] is

[***] and no other [***] has a [***] or [***], directly or indirectly, [***] any of the [***] in the [***].

(b) NTC shall not [***] the [***] to [***] other than [***] and [***].

(c) The rights set forth in Section 2.2 do not include any [***] or any rights to [***].

(d) The rights set forth in Section 2.2 shall not be effective until NTC exercises the Option in accordance with Section 2.1(b).

(e) Except as expressly permitted under [***] with respect to [***], NTC shall not [***] the [***].

2.4 Reservations of Rights. Except as expressly set forth in Section 2.2, Micron reserves all of its rights, title and interest in, to and under the Transferred Technology. No right or license is granted under this Agreement by Micron to NTC expressly, impliedly, by estoppel or otherwise, in, to or under (i) any Patent Rights, or (ii) except as expressly set forth in Section 2.2, any IP Rights, material, technology or other intellectual property owned by or licensed to Micron or any of its Affiliates. NTC shall not exploit any IP Rights of Micron in the Transferred Technology beyond the scope of the rights expressly licensed under Section 2.2.

## ARTICLE 3

## TRANSFER OF TECHNOLOGY

3.1 Transfer of Technology. If NTC exercises the Option, then Micron shall either (i) deliver the Transferred Technology, provide wafers, and provide the transfer session in accordance with the requirements set forth in Sections 3.1(a), (b), and (c), or (ii) cause a Micron Affiliate or Third Party (as designated by Micron in writing) having a semiconductor fabrication facility to which the Transferred Technology has been transferred (the "Designee") to deliver the Transferred Technology, provide wafers, and provide the transfer session in accordance with the requirements set forth in Sections 3.1(a), (b), and (c). The decision as to whether to transfer the Transferred Technology under (i) or (ii) above shall be made by Micron in its sole discretion.

(a) Delivery of Micron Transferred Technology to NTC. If NTC exercises the Option, then (to the extent not previously delivered) Micron or its Designee shall deliver to NTC the Transferred Technology, in the form stored as of the Exercise Date, using reasonable delivery methods. Micron shall use commercially reasonable efforts to complete the delivery of the Transferred Technology within [***] after the Exercise Date. Except as provided in Section 3.1(b), the foregoing obligation does not require Micron or its Designee to create, make, adapt, develop, modify and/or translate any such information or materials. After Micron or its Designee begins the delivery of Transferred Technology to NTC, NTC may request Micron or its Designee (as applicable) in writing to [***] the [***] of such [***] with any [***] to be [***]; however, with respect to the

subject matter of any such requests made more than sixty (60) days after Micron or its Designee provides written notice to NTC indicating that the [***] is [***] NTC shall [***] that Micron or its Designee [***] set forth under this Section.

(b) Preproduction Wafers. If NTC exercises the Option, then within [***] after the Exercise Date, Micron or its Designee shall, [***], provide to NTC the following wafers based on the DRAM Design as identified in Schedule 2: [***] relating to the Licensed Node or such lesser quantities as mutually agreed. The obligation to provide the foregoing wafers shall be contingent on NTC providing to Micron or its Designee, [***] after the Exercise Date, a full description of NTC's desired parameters for the foregoing wafers. Except as expressly set forth in this Section 3.1(b), Micron or its Designee shall not be obligated to provide any wafers to NTC under this Agreement.

(c) Transfer Session. After Micron or its Designee provides written notice to NTC indicating that the delivery of Transferred Technology to NTC is complete, Micron or its Designee shall, at a time reasonably designated by Micron, allow a limited number of NTC employees to attend a transfer session at a facility of Micron or its Designee (the particular facility to be designated at Micron's discretion). At such transfer session, Micron and/or its Designee shall make available their technical personnel to answer questions, address requests for clarifications, and provide explanation regarding the Transferred Technology. The duration of such transfer session shall not exceed [***] Business Days. Micron shall allow (and NTC shall not send more than) up to [***] employees of NTC to attend the [***] of such transfer session. Micron shall allow (and NTC shall not send more than) up to [***] employees of NTC to attend the [***] of such transfer session. The daily meetings during such transfer session shall not exceed [***] per day. NTC shall be responsible for all travel, meal, and lodging expenses of its employees that attend the transfer session. Neither Micron nor its Designee shall be obligated to provide NTC employees with access to any tools located at the site of the transfer session.

3.2 No Engineering Services. Except as expressly set forth in Section 3.1, neither Micron nor its Designee shall be obligated to provide any services to NTC under this Agreement. Without limiting the foregoing, neither Micron nor its Designee shall be obligated under this Agreement to provide any design and/or engineering services to NTC in connection with NTC's implementation or use of the Licensed Node. If NTC requests such services from Micron after the Exercise Date, then (i) Micron and NTC shall engage in good faith discussions regarding whether and under what terms Micron may provide such services to NTC, and (ii) in the event that Micron (in its sole discretion) elects to provide such services, the Parties shall negotiate in good faith regarding the terms of a separate written agreement to govern the provision of such services.

3.3 [***]. The obligations under this Agreement to [***] the Transferred Technology to [***] are [***] to the [***] Transferred Technology [***]. Neither [***] nor its [***] shall be obligated under this Agreement to provide to [***] any [***] to the Transferred Technology [***].

3.4 [***]. [***] may from time to time [***] to [***] and/or its Affiliates regarding the Transferred Technology ("[***]"). To the extent that [***] provides such [***], [***] hereby [***] to [***] a [***], under all of [***] in or relating to the [***], for any and all purposes and applications and [***] any and all [***]. Notwithstanding Section 5 of this Agreement, neither [***] nor its Affiliates shall be subject to any non-disclosure obligations with respect to such [***], even if designated as confidential.

## ARTICLE 4

## PRICES AND PAYMENTS

4.1 Transfer Fee. Without limiting Section 4.2, the amount of the transfer fee, payable to Micron as set forth below, shall be [***] (the "**Transfer Fee**"). In the event that NTC elects to exercise the Option, then NTC shall, in partial consideration of the rights granted to NTC under the Transferred Technology, pay to Micron [***].

4.2 Royalties for Transferred Technology; Credit. In addition to the amount due for the transfer of Transferred Technology under Section 4.1, NTC agrees to pay the following royalties in the event that NTC exercises the Option.

(a) NTC shall pay to Micron royalties of [***].

(b) NTC shall pay to Micron royalties of [***].

(c) NTC shall pay to Micron royalties of [***].

(d) If a DRAM Product or DRAM Module originally manufactured by the NTC Qualified Fab is sold or otherwise transferred to an Affiliate of NTC that is either an end user or an original equipment manufacturer ("**OEM**"), then Gross Revenues will also include such sales or other transfer to the Affiliate and the Gross Revenues used in the calculation of royalties under Section 4.2(a) or (b) shall be the greater of (i) the [***] of the [***] the [***] as [***] in the [***] that are not [***] of [***] and (ii) the [***] associated with the [***] to the [***], as applicable.

(e) Micron IP Royalties payable under this Section 4.2 are due only for sales or transfers of DRAM Products or DRAM Modules occurring before [***].

(f) Until the [***] is [***] Micron agrees to [***] of NTC's royalty obligation under Section 4.2(a) and [***] of NTC's royalty obligation under Section 4.2(b), as follows:

(i) Until the [***] is [***] for each [***] for which Micron IP Royalties are payable hereunder, (a) NTC shall make a cash payment to Micron, in accordance with Section 4.5(c), in an amount equal to [***] for such [***] for such [***] for such [***], and (b) [***] shall be [***] by [***] for such [***] for such [***].

(ii) Once the [***] is [***], the [***] shall be paid by NTC in cash in accordance with Section 4.5(c). Both before and after the [***] is [***] shall be [***] by [***]. NTC shall have no right under this Agreement to [***] of the [***].

4.3 Royalty Reporting and Payment. Within sixty (60) days following the end of [***] for so long as any Micron IP Royalties are payable hereunder, NTC shall submit to Micron a written report, which is certified by NTC's chief financial officer as complete and correct, setting forth in reasonable detail, the quantity of each DRAM Product disposed of by NTC and the applicable Micron IP Royalties due for the immediately preceding [***]. NTC shall cause each of its Affiliates (other than NTC Subsidiaries) who dispose of DRAM Product in a manner that causes Micron IP Royalties to be due to provide a written report, which is certified by each such Affiliate's chief financial officer as complete and correct, setting forth in reasonable detail such Affiliate's dispositions of DRAM Product and corresponding Micron IP Royalties for the [***] that is the subject of each of the foregoing reports of NTC. NTC shall provide a copy of each report from an Affiliate (other than NTC Subsidiaries) to Micron with submission of NTC's report. NTC shall pay to Micron all Micron IP Royalties due for such [***] contemporaneously with the submission of such report in accordance with Sections 4.2 and 4.5.

4.4 Audit Rights and Records. Micron shall have the right to have an independent Third Party auditor audit [***], upon reasonable advance written notice, during normal business hours and on a confidential basis subject to an obligation of confidentiality, all records and accounts of NTC relevant to the calculation of Micron IP Royalties in the [***] immediately preceding the date of the audit; *provided, however*, NTC shall not be obligated to provide any records and book of accounts existing prior to the Exercise Date. NTC shall, for at least a period of [***] from the date of their creation, keep complete and accurate records and books of accounts concerning all transactions relevant to calculation of Micron IP Royalties in sufficient detail to enable a complete and detailed audit to be conducted. In the event any such audit determines that Micron IP Royalties have been underpaid by more than [***] U.S. dollars in any [***], NTC shall promptly pay Micron such underpayment amount, together with interest, and reimburse Micron for its reasonable costs and expenses of the audit.

4.5 Reports and Invoices; Payments.

(a) All reports and invoices under this Agreement may be sent by any method described in Section 9.1 or electronically with hardcopy confirmation sent promptly thereafter by any method described in Section 9.1. Such reports and invoices should be sent to the following contacts or such other contact as may be specified hereafter pursuant to a notice sent in accordance with Section 9.1:

(i) Invoices to NTC:

[***]
Nanya Technology Corp.
Hwa-Ya Technology Park 669, Fuhsing 3 Rd. Kueishan, Taoyuan, Taiwan, R. O. C.

Fax: [***]
E-Mail: [***]

(ii) Reports to Micron:

[***]
8000 S. Federal Way
P.O. Box 6, MS 1-720
Boise, Idaho, USA 83707-0006
Fax: [***]
Email: [***]

(b) All amounts owed by a Party under this Agreement are stated, calculated and shall be paid in United States Dollars ($ U.S.).

(c) Payment is due on all amounts properly invoiced within thirty (30) days of receipt of invoice. All payments made under this Agreement shall be made by wire transfer to a Micron bank account designated by the following person or by such other person designated by notice:

Payments to Micron:

c/o [***]
8000 S. Federal Way
P.O. Box 6, MS 1-107
Boise, Idaho, USA 83707-0006
Fax: [***]
Email: [***]

4.6 Interest. Any amounts payable to Micron hereunder and not paid within the time period provided shall accrue interest, from the time such payment was due until the time payment is actually received, at the rate of [***], compounded annually or the highest rate permitted by Applicable Law, whichever is lower.

4.7 Taxes.

(a) All sales, use and other transfer Taxes imposed directly on or solely as a result of the services, rights licensed or technology transfers or the payments therefor provided herein shall be stated separately on the service provider's, licensor's or technology transferor's invoice, collected from the service recipient, licensee or technology transferee and shall be remitted by service provider, licensor or technology transferor to the appropriate Taxing Authority ("**Recoverable Taxes**"), unless the service recipient, licensee or technology transferee provides valid proof of tax exemption prior to the Exercise Date or otherwise as permitted by Applicable Law prior to the time the service provider, licensor or technology transferor is required to pay such Taxes to the appropriate Taxing Authority. When property is delivered, rights granted and/or services are provided or the benefit

of services occurs within jurisdictions in which collection and remittance of Taxes by the service recipient, licensee or technology transferee is required by Applicable Law, the service recipient, licensee or technology transferee shall have sole responsibility for payment of said Taxes to the appropriate Taxing Authority. In the event any Taxes are Recoverable Taxes and the service provider, licensor or technology transferor does not collect such Taxes from the service recipient, licensee or technology transferee or pay such Taxes to the appropriate Governmental Entity on a timely basis, and is subsequently audited by any Taxing Authority, liability of the service recipient, licensee or technology transferee will be limited to the Tax assessment for such Recoverable Taxes, with no reimbursement for penalty or interest charges or other amounts incurred in connection therewith. Except as provided in Section 4.7(b), Taxes other than Recoverable Taxes shall not be reimbursed by the service recipient, licensee or technology transferee, and each Party is responsible for its own respective income Taxes (including franchise and other Taxes based on net income or a variation thereof), Taxes based upon gross revenues or receipts, and Taxes with respect to general overhead, including but not limited to business and occupation Taxes, and such Taxes shall not be Recoverable Taxes.

(b) In the event that the service recipient, licensee or technology transferee is prohibited by Applicable Law from making payments to the service provider, licensor or technology transferor unless the service recipient, licensee or technology transferee deducts or withholds Taxes therefrom and remits such Taxes to the local Taxing Authority, then the service recipient, licensee or technology transferee shall [***] and shall pay to the service provider, licensor or technology transferor the [***] and, in the case of [***], after the [***] of any [***] as a result of the payment to the service provider, licensor or technology transferor [***] the service provider, licensor or technology transferor [***] of any such [***] of any such [***].

4.8 Payment Delay. Notwithstanding anything to the contrary in this Agreement, if requested by Micron by notice in accordance with Section 9.1, NTC will delay making any payments hereunder when due until notified by Micron in accordance with Section 9.1.

## ARTICLE 5

## CONFIDENTIALITY; OTHER INTELLECTUAL PROPERTY MATTERS

5.1 Confidentiality. The Micron-NTC Mutual NDA is incorporated herein by reference, and the Parties agree that the Micron-NTC Mutual NDA shall govern the confidentiality and non-disclosure obligations of the Parties in connection with information exchanged under this Agreement. If the Micron-NTC Mutual NDA is terminated or expires and is not replaced, then Confidential Information provided, disclosed, obtained or accessed in the performance of the Parties' activities under this Agreement shall continue to be subject to all applicable provisions of the Micron-NTC Mutual NDA notwithstanding such termination or expiration. The Parties acknowledge and agree that the Transferred Technology shall be deemed to be the Confidential Information of Micron without any further requirement or obligation of identification, labeling, marking or confirmation. Furthermore, each Party shall treat the terms of this Agreement as if they were the Confidential

Information of the other Party. To the extent there is a conflict or inconsistency between the terms of this Agreement and the Micron-NTC Mutual NDA, the terms of this Agreement shall govern to the extent of such conflict or inconsistency.

5.2 Additional Controls and Restrictions.

(a) To the extent that Micron provides to NTC any layout data, schematics data, scribe line test patterns, internal architecture specifications, test modes and configurations, and/or similarly sensitive information, NTC shall only store such information on secure servers subject to password protection, and NTC shall limit access to such information to only those of its Representatives (as defined in the Micron-NTC Mutual NDA) who have a need to access such information for the purposes of exercising NTC's rights under this Agreement.

(b) NTC shall only store the Transferred Technology at the NTC Qualified Fab and, except as expressly permitted under Section 5.3 of this Agreement, NTC shall not transfer, send, or otherwise transmit the Transferred Technology (or any portion thereof) to any facility other than the NTC Qualified Fab.

(c) To the extent that a Party receives from the other Party any materials or documentation (whether in physical or electronic form) that include such other Party's Confidential Information, the receiving Party shall not remove any product identification, copyright or other proprietary or confidentiality notices from such materials or documentation.

(d) Notwithstanding any provision of the Micron-NTC Mutual NDA, NTC shall not have the right to disclose any portion of the Transferred Technology to any contractors of NTC other than NTC Design Contractors and NTC Process Contractors subject to Sections 5.3(ii) and 5.3(iii).

5.3 Permitted Disclosures by NTC. Notwithstanding any other provision of this Agreement, NTC may make the following disclosures to the following entities, provided that (a) such entities are subject to written nondisclosure obligations at least as strict as the nondisclosure obligations set forth in this Agreement (including, without limitation, the Micron-NTC Mutual NDA), and (b) NTC shall have no right to (and shall not) disclose any [***]:

(i) Only as necessary to [***] by NTC of [***], and only after [***] from the date on which Micron [***] of the [***], NTC may disclose to its [***] the following aspects of the Transferred Technology for the Licensed Node: [***] (if applicable for the Licensed Node), [***], and [***].

(ii) Only as necessary to [***] to be manufactured at the NTC Qualified Fab using the Licensed Node, NTC may disclose to [***] the following aspects of the Transferred Technology for the Licensed Node: [***] (if applicable for the Licensed Node), [***], and [***]. Notwithstanding the foregoing, NTC shall not disclose the Transferred Technology (or any portion thereof) to any [***] that [***] at the time of such disclosure.

(iii) NTC may disclose to [***] of the Transferred Technology that [***] by NTC at the NTC Qualified Fab; *provided however*, that NTC shall not disclose the Transferred Technology (or any portion thereof) to any [***] that is [***] at the time of such disclosure.

(iv) NTC may disclose to [***] Transferred Technology that [***] the [***] by or for NTC for the manufacture of DRAM Products using the Transferred Technology. Any such disclosure relating to [***] for the [***] shall be limited to [***] to be [***] in connection with such [***].

5.4 Intellectual Properties Retained. Nothing in this Agreement shall be construed to transfer ownership of any intellectual property rights from one Party to another Party.

5.5 [***] by Foundry Customers. In the event that (i) NTC begins using the Transferred Technology to design, develop, manufacture, and/or test Foundry Customer Products for a Third Party [***] such Third Party [***] as set forth in [***] above, and (ii) such Third Party [***] a [***] in a [***] or any of [***] except where such Third Party [***] in a [***], the Parties agree that:

(a) NTC shall not have any right under this Agreement to [***] for such Third Party for so long as such Third Party [***]; and

(b) Micron shall not [***] based solely on [***] using the [***] for such Third Party [***] such Third Party [***] until [***] such Third Party [***].

5.6 [***]. Nothing in this Agreement shall obligate Micron to [***] NTC any [***] that Micron may [***] the [***]. Subject to the foregoing, in the event that Micron [***] and [***] a [***] (i.e., a [***] that is [***] than the [***]), Micron shall, upon request by NTC, [***] good [***] NTC regarding whether and under what [***] may [***] for such [***].

## ARTICLE 6

## WARRANTIES; DISCLAIMERS

6.1 No Implied Obligation or Rights. Nothing contained in this Agreement shall be construed as:

(a) a warranty or representation that any manufacture, sale, lease, use or other disposition of any products based upon any of the IP Rights licensed or technology transferred hereunder will be free from infringement, misappropriation or other violation of any Patent Rights, IP Rights or other intellectual property rights of any Person;

(b) an agreement to bring or prosecute proceedings against Third Parties for infringement, misappropriation or other violation of rights or conferring any right to bring or prosecute proceedings against Third Parties for infringement, misappropriation or other violation of rights; or

(c) conferring any right to use in advertising, publicity, or otherwise, any trademark, trade name or names, or any contraction, abbreviation or simulation thereof, of either Party.

6.2 Third Party Software. Exploitation of any of the rights licensed or technology transferred hereunder may require use of Software owned by a Third Party and not subject to any license granted under this Agreement or any other agreements between Micron and NTC. Nothing in this Agreement shall be construed as granting to any Party, any right, title or interest in, to or under any Software owned by any Third Party. Except as may be specified otherwise in this Agreement, any such Software so required is solely the responsibility of each of the Parties. Moreover, should a Party who transfers technology under this Agreement discover after such transfer that it has provided Software to the other Party that it was not entitled to provide, such providing Party shall promptly notify the other Party and the recipient shall return such Software to the providing Party and not retain any copy thereof.

6.3 DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 6.4, EACH OF NTC AND MICRON DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT WITH RESPECT TO ANY TECHNOLOGY, IP RIGHTS, MICRON TRANSFERRED TECHNOLOGY, OR OTHER RIGHTS OR MATERIALS LICENSED OR TRANSFERRED UNDER THIS AGREEMENT. NEITHER NTC NOR MICRON MAKES ANY WARRANTIES WITH RESPECT TO THE OTHER PARTY'S ABILITY TO: (A) USE ANY OF THE FOREGOING, OR (B) MANUFACTURE OR HAVE MANUFACTURED ANY PRODUCTS BASED THEREON. NEITHER NTC NOR MICRON MAKES ANY WARRANTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, THAT THE USE, PRACTICE OR COMMERCIAL EXPLOITATION OF ANYTHING PROVIDED PURSUANT TO THIS AGREEMENT WILL NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

6.4 Transferred Technology. Micron represents and warrants to NTC that the Transferred Technology delivered to NTC pursuant to Section 3.1 of this Agreement includes the state thereof used by Micron as of the date on which such Transferred Technology is extracted by Micron for delivery to NTC, such date being on or after the Exercise Date and on or before the date of delivery to NTC.

## ARTICLE 7

## LIMITATION OF LIABILITY

7.1 LIMITATION OF LIABILITY. EXCEPT FOR LIABILITY DUE TO BREACH OF CONFIDENTIALITY OBLIGATIONS, IN NO EVENT SHALL ONE PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER INDIRECT DAMAGES OR ANY PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY OF LIABILITY. THESE LIMITATIONS SHALL APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS ON POTENTIAL LIABILITIES SET FORTH HEREIN ARE AN ESSENTIAL ELEMENT IN THE CONSIDERATION PROVIDED BY EACH PARTY UNDER THIS AGREEMENT.

## ARTICLE 8

## TERM AND TERMINATION

8.1 Term. This Agreement shall become effective retroactively as of the Effective Date as if it had been executed and delivered on the Effective Date and shall continue in effect until terminated by mutual agreement or until terminated pursuant to Section 8.2.

8.2 Termination.

(a) This Agreement shall automatically terminate upon expiration of the Option Period if NTC has not properly exercised the Option (in accordance with Section 2.1) prior to the expiration of the Option Period.

(b) This Agreement shall automatically terminate on the date that is two (2) years after the Effective Date in the event that Elpida develops any portion of the Transferred Technology and Micron's acquisition of Elpida is not consummated (i.e., does not close) within two (2) years after the Effective Date.

(c) In the event NTC commits a material breach of this Agreement and such breach remains uncured for more than sixty (60) days after NTC receives written notice of such breach, Micron may terminate this Agreement by written notice to NTC.

(d) Micron may terminate this Agreement upon written notice to NTC in the event that one or more of the following events occur: (i) appointment of a trustee or receiver for all or any part of the assets of NTC; (ii) insolvency or bankruptcy of NTC; (iii) a general assignment by NTC for the benefit of creditor(s); or (iv) dissolution or liquidation of NTC.

(e) Micron may terminate this Agreement upon written notice to NTC in the event that (i) NTC undergoes a Change of Control, or (ii) the NTC Qualified Fab is otherwise acquired, whether de factor or de jure, by any Third Party. NTC shall provide written notice to Micron prior to such Change of Control or such acquisition by a Third Party of the NTC Qualified Fab.

(f) Micron may terminate this Agreement upon written notice to NTC in the event that any of the TTLA Agreements is terminated due to an uncured material breach by NTC.

(g) Micron may terminate this Agreement upon written notice to NTC in the event of a breach or default by Nan Ya Plastics of any of its obligations set forth in Sections 1, 2 or 3 of the New Finance Agreement.

8.3 Effects of Termination.

(a) Termination of this Agreement hereunder shall not affect any of the Parties' respective rights accrued or obligations owed before termination. In addition, the following shall survive termination for any reason: Sections 1, 2.3, 3.4, 4.1, 4.3 through 4.8, 5.1, 5.4, 6, 7, 8.3 and 9.

(b) In the event of termination of this Agreement, all licenses and rights granted to NTC under this Agreement shall terminate and NTC shall cease all use of the Transferred Technology and shall promptly, as directed by Micron, either destroy or return to Micron all copies of the Transferred Technology in NTC's possession or under NTC's control, and an officer of NTC shall provide written certification to Micron that such destruction or return has been completed.

## ARTICLE 9

## MISCELLANEOUS

9.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given upon (a) transmitter's confirmation of a receipt of a facsimile transmission, (b) confirmed delivery by a standard overnight carrier or when delivered by hand, or (c) delivery in person, addressed at the following addresses (or at such other address for a party as shall be specified by like notice):

If to NTC: Nanya Technology Corporation
Hwa-Ya Technology Park 669
Fuhsing 3 RD. Kueishan
Taoyuan, Taiwan, ROC
Attention: Legal Department
Fax: 886.3.396.2226

If to Micron: Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attention: General Counsel
Fax: 208.368.1309

9.2 Waiver. The failure at any time of a Party to require performance by the other Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by the other Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

9.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto*; provided, however*, that neither this Agreement nor any right or obligation hereunder may be assigned or delegated by either Party (including, without limitation, by merger, operation of law, or through the transfer of substantially all of the equity, assets, or business of a Party to this Agreement) in whole or in part to any other Person without the prior written consent of the non-assigning Party. Any purported assignment in violation of the provisions of this Section 9.3 shall be null and void and have no effect.

9.4 Third Party Rights. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any Person, other than the Parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision.

9.5 Force Majeure. The Parties shall be excused from any failure to perform any obligation hereunder to the extent such failure is caused by a Force Majeure Event.

9.6 Choice of Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, USA, without giving effect to the principles of conflict of laws thereof.

9.7 Jurisdiction; Venue. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be brought in a state or federal court of competent jurisdiction located in the State of California, USA, and each of the Parties to this Agreement hereby consents and submits to the exclusive jurisdiction of such

courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

9.8 Headings. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

9.9 Export Control. Each Party agrees that it will not knowingly: (a) export or re-export, directly or indirectly, any technical data (as defined by the U.S. Export Administration Regulations) provided by the other Party or (b) disclose such technical data for use in, or export or re-export directly or indirectly, any direct product of such technical data, including Software, to any destination to which such export or re-export is restricted or prohibited by United States or non-United States law, without obtaining prior authorization from the U.S. Department of Commerce and other competent Government Entities to the extent required by Applicable Laws.

9.10 Entire Agreement. This Agreement, together with its Schedules and the agreements and instruments expressly provided for herein, including the applicable terms of the other Joint Venture Documents, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements, amendments and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof, provided that, in the event that any right, obligation or other provision of this Agreement conflicts with any right, obligation or provision of that certain Waiver and Consent Side Letter Agreement, entered into by and between the Parties and effective October 11, 2012, as amended, the Waiver and Consent Side Letter Agreement shall prevail, and the Parties shall conduct their affairs to give effect to such rights, obligations or provisions as are set forth in the Waiver and Consent Side Letter Agreement.

9.11 Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Laws or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

9.12 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**< Signature pages follow >**

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first above written.

**MICRON TECHNOLOGY, INC.**

By: /s/ Michael W. Sadler
Name: Michael W. Sadler
Title: Vice President of Corporate Development

**NANYA TECHNOLOGY CORPORATION**

By: /s/ Charles Kau
Name: Charles Kau
Title: President

**EXHIBIT 10.127**

**[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT**

**NTC/MICRON CONFIDENTIAL**

# OMNIBUS IP AGREEMENT

This **OMNIBUS IP AGREEMENT** ("**Agreement**") is made and entered into on this 17th day of January, 2013, by and between Nanya Technology Corporation (Nanya Technology Corporation [Translation from Chinese]), a company incorporated under the laws of the Republic of China and having a principal place of business at Hwa-Ya Technology Park 669, Fuhsing 3 RD, Kueishan Taoyuan, Taiwan, ROC ("**NTC**"), and Micron Technology, Inc., a Delaware corporation with a principal place of business at 8000 South Federal Way, Boise, Idaho 83707 U.S.A. ("**Micron**"). Each of NTC and Micron may be referred to herein individually as a "**Party**" and collectively as the "**Parties**."

## RECITALS

**WHEREAS**, prior to the date of this Agreement, Micron, MNL, NTC and IMI (the "**Prior JV Parties**") entered into certain agreements with each other relating to the ownership, governance and operation of IMI and regarding certain business relationships among the Prior JV Parties (such agreements as amended prior to the date of this Agreement, the "**Prior JV Documents**");

**WHEREAS**, upon the Closing (as defined hereinafter), certain of the Prior JV Documents will be terminated, including all the provisions therein that purport to survive termination, and certain other of the Prior JV Documents will be terminated with certain provisions therein to survive in the same or amended form;

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound do hereby agree as follows:

## ARTICLE I

## DEFINITIONS; CERTAIN INTERPRETIVE MATTERS

1.1 **Definitions**.

In addition to the terms defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the respective meanings set forth below:

"**Affiliate**" means, with respect to any specified Person, any other Person that directly or indirectly, including through one or more intermediaries, controls, or is controlled by, or is under common control with such specified Person; and the term "**affiliated**" has a meaning correlative to the foregoing.

"**Agreement**" shall have the meaning set forth in the preamble to this Agreement.

"**Applicable Law**" means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"**Closing**" means the time contemplated by Section 4.1 of the Master Agreement, upon which the various deliveries and actions that are contemplated by the Master Agreement to take place at the "Closing" shall have occurred.

"**Confidential Information**" means that information deemed to be "Confidential Information" under the MCA if disclosed on or after April 21, 2008 and prior to the Effective Date, or information that meets the definition of Confidential Information as set forth in the Micron-NTC NDA if provided, disclosed, obtained or accessed on or after the Effective Date.

"**Control**" means the power or authority, whether exercised or not, to direct the business, management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, which power or authority shall conclusively be presumed to exist upon possession of beneficial ownership or power to direct the vote of more than fifty percent (50%) of the votes entitled to be cast at a meeting of the members, shareholders or other equity holders of such Person or power to control the composition of a majority of the board of directors or like governing body of such Person; and the terms "**Controlled**" and "**Controlling**" shall have a meaning correlative to the foregoing.

"**Controlled Facility**" of a company means (i) a wafer fabrication facility owned by such company, (ii) a wafer fabrication facility owned by an entity that is Controlled by such company, and/or (iii) a wafer fabrication facility for which such company has a contractual right to receive at least [***] percent ([***]%) of the output of such wafer fabrication facility for at least [***] consecutive months.

"**Design Qualification**" means, with respect to each DRAM Design or DRAM Module, when (a) the corresponding DRAM Product can be made fully compliant with any applicable Industry Standard(s) (if any) and the defects per million die quality level meets or exceeds the level necessary for high volume shipments for desktop and notebook personal computers or Mobile Devices, or (b) such other or additional parameters as may be defined in the Design SOW as "Design Qualification" for such DRAM Design, such as meeting or exceeding specified measurements during tests specified under "Design Qualification" in Schedule 8 of the JDP Agreement or the JDP-CSA Agreement, as applicable, for computer server or other applications specified in the applicable Design SOW.

"**DRAM**" means dynamic random access memory cell that functions by using a capacitor arrayed predominantly above the semiconductor substrate.

"**DRAM Design**" means, with respect to a DRAM Product, the corresponding design components, materials and information listed on Schedule 3 of the JDP Agreement or the JDP-CSA Agreement or as otherwise determined by the relevant JDP Committee in a SOW.

"**DRAM Module**" means one or more DRAM Products in a package or module (whether as part of a SIMM, DIMM, multi-chip package, memory card or other memory module or package) manufactured by using a Process Node licensed under any of the TTLA Agreements or the JDP Process Node.

"**DRAM Product**" means any stand-alone semiconductor device comprising DRAM that is a dynamic random access memory device and that is designed or developed primarily for the function of storing data, in die, wafer or package form.

"**GAAP**" means generally accepted accounting principles, consistently applied for all periods at issue.

"**Effective Date**" means January 1, 2013.

"**Foundational Know-How**" means, with respect to each Party, any semiconductor process development technologies, designs, layouts, methodologies, algorithms or programs, including Probe Testing, assembly, FT, and Burn-In, that are used by such Party in its operations at any time on or after the April 21, 2008 and before the Effective Date for the design, development, manufacture, or test through Design Qualification or Process Qualification, as applicable, of DRAM Products or DRAM Modules that comply with an Industry Standard and that can be shared with the other Party under the terms of any of the TTLA Agreements without any further permission or consent of, further payment to, or breach of agreement with, any Third Party and including all IP rights in the above; *provided, however,* the term "Foundational Know-How" does not include (a) any semiconductor process development technologies, designs, layouts, methodologies or algorithms that (i) are first created by a Party for use in connection with the manufacture or testing of NAND Flash Memory Products or Imaging Products and are not used in DRAM Products or DRAM Modules or (ii) that constitute JDP Work Product or a JDP Invention or any IP Rights therein, or (b) any Patent Rights.

"**Governmental Entity**" means any governmental authority or entity of any country in the world, including any agency, board, bureau, commission, court, municipality, department, subdivision or instrumentality thereof.

"**IMI**" means Inotera Memories, Inc. (Inotera Memories, Inc. [Translation from Chinese]), a company incorporated under the laws of the Republic of China.

"**Industry Standard**" means the documented technical specifications that set forth the pertinent technical and operating characteristics of a DRAM Product if such specifications are publicly available for use by DRAM manufacturers, and if (a) Micron or NTC and (b) at least [***] other DRAM manufacturers that each account for at least [***] per cent ([***]%) of the sales of the

global market (as such sales/market are reported by Gartner Dataquest) for DRAM Products make commercially available products that are fully compliant with such specifications. All JEDEC specifications for system main memory for computers and/or Mobile Devices are deemed "Industry Standards."

"**IP Rights**" means copyrights, rights in trade secrets, Mask Work Rights and pending applications or registrations of any of the foregoing anywhere in the world. The term "IP Rights" does not include rights to any Patent(s) or rights in trademarks.

"**JDP Agreement**" means that certain Amended and Restated Joint Development Program Agreement by and between Micron and NTC effective as of November 26, 2008 and terminated pursuant to the provisions of this Agreement.

"**JDP-CSA Agreement**" means that certain Joint Development Program and Cost Sharing Agreement by and between Micron and NTC effective as of April 9, 2010 and terminated pursuant to the provisions of this Agreement.

"**JDP-CSA Termination**" shall have the meaning set forth in Section 4.2 to this Agreement.

"**JDP Committee**" means the committee formed and operated by Micron and NTC to govern the performance of the Parties under the JDP Agreement or the JDP-CSA Agreement.

"**JDP Inventions**" means all discoveries, improvements, inventions, developments, processes or other technology, whether patentable or not, that is/are conceived by one or more Representatives of one or more of the Parties in the course of activities conducted under the JDP Agreement or the JDP-CSA Agreement prior to the Effective Date.

"**JDP Process Node**" means any Process Node resulting from the research and development activities of the Parties pursuant to the JDP Agreement or the JDP-CSA Agreement.

"**JDP Termination**" shall have the meaning set forth in Section 4.1 to this Agreement.

"**JDP Work Product**" means the tangible work product created prior to the Effective Date under either the JDP Agreement or the JDP-CSA Agreement in the performance of any SOW, including all documentation, records, Software, methodology, drawings, masks, databases and other tangible materials created in performing any SOW, regardless of the form in which such work product is originally created or thereafter reproduced, translated, converted or stored.

"**Joint Venture Agreement**" means that certain Joint Venture Agreement, dated as of the date hereof, by and among MNL, Numonyx B.V., MTAP, and NTC.

"**Joint Venture Documents**" has the meaning set forth in the Joint Venture Agreement.

"**Manufacturing Fab Cooperation Agreement**" means that certain Amended and Restated Manufacturing Fab Cooperation Agreement dated as of November 26, 2008, by and between Parties and terminated pursuant to this Agreement.

"**Master Agreement**" means that certain Master Agreement, dated as of the date hereof, by and among Micron, MNL, Numonyx Holdings B.V., Micron Semiconductor Asia Pte. Ltd., a private limited company organized under the laws of Singapore, MTAP, NTC and IMI.

"**Mask Work Rights**" means rights under the United States Semiconductor Chip Protection Act of 1984, as amended from time to time, or under any similar equivalent laws in countries other than the United States.

"**MCA**" means that certain Second Amended and Restated Mutual Confidentiality Agreement dated as of November 26, 2008, among NTC, NTC's Subsidiaries (as defined therein), Micron, Micron's Subsidiaries (as defined therein), MNL, MeiYa and IMI, as amended by Amendment No. 1 on April 9, 2010, and terminated pursuant to this Agreement.

"**MCA Termination**" has the meaning set forth in Section 4.4.

"**MeiYa**" means MeiYa Technology Corporation (MeiYa Technology Corporation [Translation from Chinese]), a company incorporated under the laws of the Republic of China.

"**Memory Product**" shall mean one or more integrated circuits, printed circuit boards, multi-chip packages or other assemblies with which such integrated circuits are attached or otherwise associated that are designed, developed, marketed or used primarily for storing digital information, including, for example and without limitation, any DRAM, NAND Flash, NOR, PCM, dynamic, static, volatile, low volatility or non-volatile memory, whether as discrete integrated circuits, or as part of a SIMM, DIMM, multi-chip package, memory card (e.g., compact flash card, SD card, etc.) or other memory module or package.

"**Micron**" shall have the meaning set forth in the preamble to this Agreement.

"**Micron Competitor**" means (a) [***] and any Subsidiaries of the companies set forth above; (b) any successor-in-interest of any of the companies referenced in (a) above and any successors to all or substantially all of their respective Memory Products businesses; (c) any Affiliate of any company set forth in (a) above; or (d) a company that uses a Controlled Facility to manufacture Memory Products in wafer form and that derives (either on a consolidated or standalone basis) at least [***] percent ([***]%) of its revenue from the manufacture or sale of Memory Products (based on the last fiscal year of such revenue).

"**Micron-NTC NDA**" means that certain Micron-NTC Mutual Nondisclosure Agreement, dated as of the date hereof, between Micron and NTC.

"**MNL**" means Micron Semiconductor B.V., a private limited liability company organized under the laws of the Netherlands.

"**MTAP**" means Micron Technology Asia Pacific, Inc., an Idaho corporation.

"**Non-Suit Agreement**" means that certain Amended and Restated Non-Suit Agreement dated November 26, 2008, among NTC and Micron, and terminated pursuant to this Agreement.

"**NTC**" shall have the meaning set forth in the preamble to this Agreement.

"**Numonyx B.V.**" means Numonyx Holdings B.V., a private limited liability company organized under the laws of the Netherlands.

"**Party**" and "**Parties**" shall have the meaning set forth in the preamble to this Agreement.

"**Patents**" means all issued and unexpired patents issued by a Governmental Entity, including any and all divisionals, continuations, continuations-in-part, reissues, reexaminations, extensions, foreign counterparts or equivalents of any of the foregoing, wherever and whenever existing.

"**Person**" means any natural person, corporation, joint stock company, limited liability company, association, partnership, firm, joint venture, organization, business, trust, estate or any other entity or organization of any kind or character.

"**Prior JV Documents**" shall have the meaning set forth in the recitals to this Agreement.

"**Prior JV Parties**" shall have the meaning set forth in the recitals to this Agreement.

"**Process Node**" means a collection of process technology and equipment that enables the production of semiconductor wafers for a particular minimum repeatable half pitch of a device (minimum physical feature size or line width) and often designated by the size of such pitch (*e.g.*, the 68 nm Process Node or the 50 nm Process Node, etc.).

"**Process Qualification**" means, with respect to each Process Node, when (a) the DRAM Products or DRAM Modules designed to be on the node can be made fully compliant with any applicable Industry Standard(s) (if any) and the defects per million die quality level meets or exceeds the level necessary for high volume shipments for desktop and notebook personal computer applications or (b) or such other or additional parameters as may be defined in the Process SOW as "Process Qualification" for the Process Node that is the subject of the SOW, such as any of those parameters for "Process Qualification" set forth in Schedule 8 of the JDP Agreement or the JDP-CSA Agreement for computer server or other applications specified in the applicable Process SOW prior to the Effective Date.

"**Process Technology**" means that process technology developed by one or both Parties before expiration of the Term and utilized in the manufacture of DRAM wafers, including Probe Testing and technology developed through Product Engineering thereof**,** regardless of the form in which

any of the foregoing is stored, but excluding any Patent Rights and any technology, trade secrets or know-how that relate to and are used in any back-end operations (after Probe Testing).

"**RASL**" means that certain Second Amended and Restated Restricted Activities Side Letter by and between the Parties effective as of April 9, 2010 and terminated pursuant to this Agreement.

"**RASL Termination**" shall have the meaning set forth in Section 4.5 to this Agreement.

"**Rejected Development Work**" means that portion of any SOW that was proposed by either Micron or NTC pursuant to the JDP Agreement or the JDP-CSA Agreement for the development of a DRAM Design that was rejected by the JDP Committee.

"**Representative**" means with respect to a Party, any director, officer, employee, agent or Contractor of such Party or a professional advisor to such Party, such as an attorney, banker or financial advisor of such Party who is under an obligation of confidentiality to such Party by contract or ethical rules applicable to such Person.

"**Subsidiary**" means, with respect to any specified Person, any other Person that directly or indirectly, including through one or more intermediaries, is Controlled by such Person.

"**Third Party**" means any Person other than NTC or Micron, or any of their respective Affiliates.

"**TTA**" means that certain Technology Transfer Agreement dated November 26, 2008, among the Parties and IMI, as amended by Amendment No. 1 as of April 9, 2010, Addendum No. 1 as of April 9, 2010, and Addendum No. 2 as of June 8, 2011, and terminated pursuant to this Agreement.

"**TTA Termination**" shall have the meaning set forth in Section 4.4 to this Agreement.

"**TTA 68-50**" shall have the meaning set forth in Section 2.3 to this Agreement.

"**TTA 68-50 Termination**" shall have the meaning set forth in Section 2.3 to this Agreement.

"**TTLA**" means that certain Second Amended and Restated Technology Transfer and License Agreement effective April 9, 2010 between Micron and NTC.

"**TTLA Agreements**" means, collectively, the TTLA, TTLA 68-50 and TTLA 20.

"**TTLA 20**" means that certain Technology Transfer and License Option Agreement for 20nm Process Nodes dated as of the date hereof, between Micron and NTC, as may be amended from time to time.

"**TTLA 68-50**" means that certain Technology Transfer and License Agreement for 68-50nm Process Nodes dated April 21, 2008, between Micron and NTC, as amended by Amendment No. 1 as of April 9, 2010.

1.2 **Certain Interpretive Matters**.

(a) Unless the context requires otherwise, (i) all references to Sections, Articles, Exhibits, Appendices or Schedules are to Sections, Articles, Exhibits, Appendices or Schedules of or to this Agreement, (ii) each accounting term not otherwise defined in this Agreement shall have the meaning commonly applied to it in accordance with GAAP, (iii) words in the singular include the plural and vice versa, (iv) the term "**including**" means "including without limitation," and (v) the terms "**herein**," "**hereof**," "**hereunder**" and words of similar import shall mean references to this Agreement as a whole and not to any individual section or portion hereof.

(b) No provision of this Agreement will be interpreted in favor of, or against, any Party by reason of the extent to which (i) such Party or its counsel participated in the drafting thereof, or (ii) such provision is inconsistent with any prior draft of this Agreement or such provision.

## ARTICLE II

## TERMINATIONS

2.1 **Non-Suit Agreement**. The Non-Suit Agreement is hereby terminated effective retroactively as of the Effective Date (including any provisions that, pursuant to the Non-Suit Agreement, are expressly stated to survive termination). At the Closing, Micron and NTC will enter into a Patent License Agreement, substantially in the form of Exhibit A, which shall be effective retroactively as of the Effective Date as if it had been executed and delivered on the Effective Date.

2.2 **Manufacturing Fab Cooperation Agreement**. The Manufacturing Fab Cooperation Agreement is hereby terminated effective retroactively as of the Effective Date (including any provisions that, pursuant to the Manufacturing Fab Cooperation Agreement, are expressly stated to survive termination).

2.3 **Technology Transfer Agreement for 68-50nm Process Nodes**. The Technology Transfer Agreement for 68-50nm Process Nodes ("**TTA 68-50**") is hereby terminated (including any provisions that, pursuant to the TTLA 68-50, are expressly stated to survive termination) effective retroactively as of the Effective Date ("**TTA 68-50 Termination**").

## ARTICLE III

## AMENDED AND RESTATED AGREEMENTS

3.1 **Technology Transfer and License Agreement for 68-50nm Process Nodes**. At the Closing, Micron and NTC will enter into a Second Amended and Restated Technology Transfer and License Agreement for 68-50nm Process Nodes, substantially in the form of Exhibit B which shall be effective retroactively as of the Effective Date as if it had been executed and delivered on the Effective Date and which shall replace the TTLA 68-50.

3.2 **Technology Transfer and License Agreement**. At the Closing, Micron and NTC will enter into a Third Amended and Restated Technology Transfer and License Agreement, substantially in the form of Exhibit C, which shall be effective retroactively as of the Effective Date as if it had been executed and delivered on the Effective Date and which shall replace the TTLA.

## ARTICLE IV

## TERMINATIONS WITH SURVIVAL/AMENDMENTS

4.1 **JDP Agreement**. The JDP Agreement is hereby terminated (including any provisions that, pursuant to the JDP Agreement, are expressly stated to survive termination) effective retroactively as of the Effective Date ("**JDP Termination**"). Following the effectiveness of the JDP Termination, and notwithstanding such JDP Termination:

(a) the JDP Committee and Patent Review Committee shall cease to operate, and the JDP Co-Chairmen shall no longer have any responsibilities anticipated by the JDP Committee Charter, attached as Schedule 2 to the JDP Agreement;

(b) the R&D Roadmap prepared by the JDP Co-Chairmen and approved by the JDP Committee shall no longer govern the activities of Micron or NTC after the effectiveness of the JDP Termination, and any activity with respect to [***], or any activity contemplated by any SOW, including any funding obligations, anticipated before the effectiveness of the JDP Termination by such R&D Roadmap or SOW to be undertaken at a point in time that is after the effectiveness of the JDP Termination shall no longer constitute an obligation on the part of either Micron or NTC;

(c) the "Development Restrictions" applicable to both Micron and NTC with respect to Rejected Development Work shall no longer act as a prohibition on either Micron or NTC with respect to such Rejected Development Work, *provided, however*, that NTC shall continue to be bound by the restrictions set forth in the provisions of the RASL which shall continue to be binding on NTC after the effectiveness of the JDP Termination as set forth in Section 4.5 of this Agreement;

(d) neither Micron nor NTC shall have any right under the JDP Agreement to send its Representatives to any site or fabrication facility owned or operated by the other Party for any purpose;

(e) the requirements of Section 3.8 of the JDP Agreement with respect to the establishment of separate repositories for JDP Work Product, and for the establishment of secure network connectivity between Micron and NTC shall no longer be binding on the Parties, and any such repositories shall no longer be required to be separate, and any such secure network connections may be terminated;

(f) within forty five (45) days of JDP Termination, Micron and NTC shall participate in a last and final [***] of [***] and shall follow the process set out in [***] of the JDP Agreement;

(g) Section 5.3(d) and Section 5.7 shall survive JDP Termination and shall continue to be binding on both Micron and NTC; and

(h) Article 6 shall survive JDP Termination and shall continue to be binding on both Micron and NTC, as modified below:

(i) Section 6.1(b) shall be amended by striking the first occurrence of "each of the Parties" and "no Party," and to substitute "NTC" in lieu thereof. The effect of this amendment is affirmatively to state that only NTC shall be deemed a "Receiving Party" under the Mutual Confidentiality Agreement with respect to JDP Inventions, JDP Work Product, JDP Process Nodes, JDP Designs or IP Rights or rights to Patents therein, and that only NTC shall be restricted from contributing, transferring or disclosing any JDP Inventions, JDP Work Product, JDP Process Nodes, JDP Designs or IP Rights or rights to Patents therein to any Third Party except as provided in Section 6.2 of the JDP Agreement. Micron shall not be deemed to be a Receiving Party with respect to such information, and except for Section 6.2(c) of the JDP Agreement, Micron shall not be subject to any restriction set forth in Article 6 of the JDP Agreement with respect to disclosure of such information; and

(ii) Sections 6.2(a), 6.2(b) and 6.2(c) shall be deleted in their entirety and shall be substituted with the following:

6.2(a) NTC may contribute, transfer and disclose any Confidential Information described in Section 6.1(b) to its wholly-owned Subsidiaries subject to a written obligation of confidentiality that is no less restrictive than that applicable to NTC under the Mutual Confidentiality Agreement.

6.2(b) NTC may disclose the JDP Inventions and related Confidential Information, as the case may be, to its patent attorneys and patent agents and

any Governmental Entity as deemed by NTC necessary to conduct Patent Prosecution on the JDP Inventions owned by NTC as a result of the Draft.

6.2(c) Micron may disclose any Confidential Information described in Section 6.1(b) to any Third Party, *provided that* each such disclosure shall not grant or purport to grant, explicitly, by implication by estoppel or otherwise, to the Third Party any right, title or interest in, to or under any Patent Rights of NTC, including Patent Rights of NTC in JDP Inventions.

(iii) Section 6.2(e) shall be amended by (A) striking the reference to "twelve (12) months," and inserting in lieu thereof -six (6) months-, and (B) striking the first occurrence of "either Micron or," and by striking the first occurrence of "their respective" and substituting in lieu thereof -NTC's-. The effect of this amendment is affirmatively to state that the prohibitions on disclosure set forth in Section 6.2(e) shall apply to NTC alone, and shall not apply to Micron.

(iv) Section 6.2(e) shall be further amended by adding to the list of JDP Work Product information that may be disclosed by NTC, in strict accordance with the criteria set forth in Section 6.2(e), the following: [***] and [***].

(i) For the fourth calendar quarter of 2012, NTC shall only be obliged to [***] of its [***] attributable to it pursuant to Schedule 4.

(j) For the fourth calendar quarter of 2012, the [***] set forth in Schedule 5 shall be changed to a [***] for all classes of [***].

4.2 **JDP-CSA Agreement**. The JDP-CSA Agreement is hereby terminated (including any provisions that, pursuant to the JDP-CSA Agreement, are expressly stated to survive termination) effective retroactively as of the Effective Date ("**JDP-CSA Termination**"). The consequence of such JDP-CSA Termination shall be the same as those set forth in Section 4.1, above, with respect to the JDP Agreement.

4.3 **Technology Transfer Agreement**. The TTA is hereby terminated (including any provisions that, pursuant to the TTA, are expressly stated to survive termination) effective retroactively as of the Effective Date ("**TTA Termination**"). Following the effectiveness of the TTA Termination:

(a) neither Micron nor NTC shall have any obligation under Section 2.1 of the TTA to transfer to IMI any JDP Work Product or other technology;

(b) any payments which had accrued under Article 3 of the TTA prior to the effectiveness of the TTA Termination and which remain outstanding as of the date hereof shall remain due and owing, and shall be paid pursuant to the provisions set forth in Article 3 of the TTA;

(c) NTC shall have no further claim or right under [***] of the TTA with respect to [***] of [***], of [***], or of [***] after the effectiveness of the TTA Termination by IMI or by Micron, and shall further have no right of [***] with respect to such [***].

(d) no Party shall have any obligations under Article 4 with respect to a Patent Review Committee.

4.4 **Mutual Confidentiality Agreement**. The MCA is hereby terminated (including any provisions that, pursuant to the MCA, are expressly stated to survive termination) effective retroactively as of the Effective Date ("**MCA Termination**"). Following the effectiveness of the MCA Termination:

(a) the obligations of NTC under the MCA with respect to information disclosed to or received by NTC on or after the effective date of the MCA and prior to the Effective Date, shall continue in effect until [***] of [***] under the [***];

(b) upon [***] of [***] under the [***], NTC may disclose the Confidential Information of Micron that had been disclosed to or received by NTC on or after the effective date of the MCA and prior to the Effective Date, to any Third Party who is not a Micron Competitor under obligations of confidentiality that are at least as restrictive as the obligations set forth in the MCA;

(c) Section 8(b) of the MCA shall not become effective until NTC's obligations under the MCA terminate;

(d) Sections 8(e) and 8(f) of the MCA shall survive MCA Termination and shall remain in effect;

(e) Micron's confidentiality obligations with respect to (A) Foundational Know-How owned by NTC shall continue, *provided that*, Micron may disclose such information to any Third Party under obligations of confidentiality that are at least as restrictive as the obligations set forth in the MCA, and (B) NTC Confidential Information falling outside of Foundational Know-How shall be governed by the Micron-NTC NDA; and

(f) confidentiality obligations of the MCA otherwise applicable to Micron with respect to JDP Inventions, JDP Work Product, JDP Process Nodes, JDP Designs, IP Rights or rights to Patents therein shall be superseded and replaced by the amendments to the JDP Agreement set forth in Section 4.1(h), above, but no other confidentiality obligations under the MCA shall survive or be applicable as to Micron.

4.5 **Restricted Activities Letter Agreement**. The RASL is hereby terminated effective retroactively as of the Effective Date ("**RASL Termination**"). Following the effectiveness of the RASL Termination, and notwithstanding such RASL Termination:

(a) the following RASL restriction applicable to NTC shall survive such RASL Termination and shall continue to apply to NTC:

(i) [***] and its affiliates shall not, prior to [***], enter into any agreement with any Third Party for the purposes of [***].

(b) [***] and its Affiliates shall be free of all restrictions and/or prohibitions set forth in the RASL.

## ARTICLE V

## MISCELLANEOUS

5.1 [***] Assistance. In the event that [***] in implementing and/or operating the [***], [***] may submit to [***] a written request for [***] relating to such [***]. [***] may (in its sole discretion) provide [***] regarding the [***] in response to such request. If [***] elects to provide such [***], [***] may provide such [***] directly to [***] or [***] may provide [***] to provide such [***] to [***]. Notwithstanding the foregoing, [***] shall not be obligated to provide any [***] (or to [***] to provide any [***]) in response to such request, and any [***] that [***] elects to provide ([***] shall be considered [***] Confidential Information.

5.2 **Assignment**. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto; *provided*, *however*, neither this Agreement nor any right or obligation hereunder may be assigned or delegated by any Party in whole or in part to any other Person, including, without limitation, by merger, operation of law, or through the transfer of all or substantially all of the equity, assets, or business of a Party to this Agreement, without the prior written consent of the non-assigning Party. Any purported assignment in violation of the provisions of this Section 5.2 shall be null and void and have no effect.

5.3 **Compliance with Laws and Regulations**. Each of the Parties shall comply with, and shall use reasonable efforts to require that its respective subcontractors comply with, Applicable Laws relating to this Agreement and the performance of such Party's obligations hereunder.

5.4 **Notice**. All notices and other communications hereunder shall be in writing and shall be deemed given upon (a) transmitter's confirmation of a receipt of a facsimile transmission, (b) confirmation of delivery by a standard overnight or recognized international carrier, or (c) delivery in person, addressed at the following addresses (or at such other address for a Party as shall be specified by like notice):

In the case of Micron:

Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attn: General Counsel
Facsimile: (208) 368-1309

In the case of the NTC:

Nanya Technology Corporation (Nanya Technology Corporation [Translation from Chinese])
Hwa-Ya Technology Park 669
Fuhsing 3 RD,
Kueishan Taoyuan,
Taiwan, ROC
Attn: Legal department
Facsimile:886-3-396-2226

5.5 **Waiver**. The failure at any time of a Party to require performance by another Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by another Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

5.6 **Severability**. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force and effect in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Laws or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

5.7 **Third Party Rights**. Nothing in this Agreement, whether express or implied, is intended, or shall be construed, to confer, directly or indirectly, upon or give to any Person, other than the Parties hereto and their respective Subsidiaries, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein. The Subsidiaries of the Parties hereto are third party beneficiaries of this Agreement with respect to, and to the extent, provisions of this Agreement expressly apply to such Subsidiaries.

5.8 **Amendment**. This Agreement may not be modified or amended except by a written instrument executed by, or on behalf of, each of the Parties.

5.9 **Entire Agreement**. This Agreement, together with its Schedules and the agreements and instruments expressly provided for herein, including the applicable terms of the other Joint Venture Documents, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements, amendments and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof, *provided however*, that in the event that any right, obligation or other provision of this Agreement conflicts with any right, obligation or provision of that certain Waiver and Consent Side Letter Agreement entered into by and between the Parties and effective October 11, 2012, as amended, the Waiver and Consent Side Letter Agreement shall prevail, and the Parties shall conduct their affairs to give effect to such rights, obligations or provisions as are set forth in the Waiver and Consent Side Letter Agreement.

5.10 **Choice of Law**. This Agreement shall be governed by and construed in accordance with the laws of Delaware, without giving effect to its conflict of laws principles.

5.11 **Jurisdiction; Venue**. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be brought in the state or federal courts located in California, and each of the Parties hereby consents and submits to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

5.12 **Headings**. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

5.13 **Counterparts**. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

***[Signature pages follow]***

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first written above.

**MICRON TECHNOLOGY, INC.**

By: /s/ Michael W. Sadler

Name: Michael W. Sadler

Title: Vice President of Corporate Development

NANYA TECHNOLOGY CORPORATION

By: /s/ Charles Kau
Name: Charles Kau
Title: President

**[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT**



# SECOND AMENDED AND RESTATED TECHNOLOGY TRANSFER AND LICENSE AGREEMENT FOR 68-50NM PROCESS NODES

This **SECOND AMENDED AND RESTATED TECHNOLOGY TRANSFER AND LICENSE AGREEMENT FOR 68-50NM PROCESS NODES** (this "**Agreement**"), is made and entered into as of this 17th day of January, 2013, by and between Micron Technology, Inc., a Delaware corporation ("**Micron**"), and Nanya Technology Corporation (Nanya Technology Corporation [Translation from Chinese]), a company incorporated under the laws of the Republic of China ("**NTC**"). (Micron and NTC are referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**").

## RECITALS

A. Micron has developed technology and product designs for 68nm and 50nm Process Nodes for the manufacture of Stack DRAM Products.

B. Micron transferred and licensed the 68nm and 50nm Process Nodes and a related DRAM product design to NTC pursuant to the terms and conditions set forth in the Technology Transfer and License Agreement for 68-50nm Process Nodes between Micron and NTC dated April 21, 2008 ("**Original Agreement**").

C. The Parties amended the Original Agreement on April 9, 2010, in order to modify the definition of Foundry Customer as set forth in Amendment No. 1 to the Technology Transfer and License Agreement for 68-50nm Process Nodes (the "**First Amended Agreement**").

D. The Parties now desire to amend and restate the First Amended Agreement upon the terms and conditions set forth herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, the Parties, intending to be legally bound, hereby agree as follows.

## ARTICLE 1

## DEFINITIONS; CERTAIN INTERPRETATIVE MATTERS

1.1 Definitions.

"**Adjusted Revenues**" means (a) with respect to [***], the difference of A minus B, wherein "A" equals the [***] from the [***] of the [***], and "B" equals [***] associated with [***], if any, *provided, however*, that Adjusted Revenues (i) shall not include any Foundry Customer Adjusted Revenues, and (ii) cannot be less than zero; and (b) with respect to a [***], (x) the difference of C minus D, wherein "C" equals the [***] from the [***] of the [***] and "D" equals [***] associated with [***], multiplied by (y) the ratio of "E" divided by "F", wherein "E" equals the number of [***] and "F" equals [***], *provided, however,* that Adjusted Revenues cannot be less than zero.

"**Affiliate**" means, with respect to any specified Person, any other Person that directly or indirectly, including through one or more intermediaries, controls, or is controlled by, or is under common control with such specified Person; and the term "**affiliated**" has a meaning correlative to the foregoing.

"**Agreement**" shall have the meaning set forth in the preamble to this Agreement.

"**Amendment Date**" means January 1, 2013.

"**Applicable Law**" means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"**BEOL Costs**" means the back-end assembly (including module and packaging) and test costs of NTC incurred after Probe Testing of the Stack DRAM wafer from which such Stack DRAM Product is made.

"**Change of Control**" means, with respect to a Party: (i) any Third Party becoming the beneficial owner of securities of such Party representing more than fifty percent (50%) of the total of all then outstanding voting securities; (ii) a merger or consolidation of such Party with or into a Third Party, other than a merger or consolidation that would result in the holders of the voting securities immediately prior thereto holding securities that represent immediately after such merger or consolidation more than fifty percent (50%) of the total combined voting power of the entity that survives such merger or consolidation or the parent of the entity that survives such merger or consolidation; or (iii) the sale or disposition of all or substantially all of the assets of such Party to a Third Party wherein the holders of such Party's outstanding voting securities immediately before such sale do not, immediately after

such sale, own or control (directly or indirectly) equity representing a majority of the outstanding voting securities of such Third Party.

"**Confidential Information**" means that information described in Section 8.1 deemed to be "Confidential Information" under the Mutual Confidentiality Agreement if disclosed on or after the Effective Date and prior to the Amendment Date, or information that meets the definition of Confidential Information as set forth in the Micron-NTC Mutual NDA if provided, disclosed, obtained or accessed on or after the Amendment Date.

"**Control**" (whether capitalized or not) means the power or authority, whether exercised or not, to direct the business, management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, which power or authority shall conclusively be presumed to exist upon possession of beneficial ownership or power to direct the vote of more than fifty percent (50%) of the votes entitled to be cast at a meeting of the members, shareholders or other equity holders of such Person or power to control the composition of a majority of the board of directors or like governing body of such Person; and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Controlled Facility**" of a company means (i) a wafer fabrication facility owned by such company, (ii) a wafer fabrication facility owned by an entity that is Controlled by such company, and/or (iii) a wafer fabrication facility for which such company has a contractual right to receive at least [***] percent ([***]%) of the output of such wafer fabrication facility for at least [***] consecutive months.

"**Density**" means the physical density of (i.e., total number of bits that can be stored in) a Stack DRAM Product.

"**DRAM Product**" means any stand-alone semiconductor device that is a dynamic random access memory device and that is designed or developed primarily for the function of storing data, in die, wafer or package form.

"**Effective Date**" means April 21, 2008, the effective date of the Original Agreement.

"**First Amended Agreement**" shall have the meaning set forth in the Recitals to this Agreement.

"**Force Majeure Event**" means the occurrence of an event or circumstance beyond the reasonable control of a Party and includes, without limitation, (a) explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; (c) acts of federal, state, local or foreign Governmental Entity; (d) labor disputes, lockouts, strikes or other industrial action, whether direct or indirect and

whether lawful or unlawful; (e) failures or fluctuations in electrical power or telecommunications service or equipment; and (f) delays caused by the other Party or third-party nonperformance (except for delays caused by a Party's Contractors, subcontractors or agents).

"**Foundry Customer**" means a Third Party customer for Stack DRAM Products, the [***] by the [***] to the [***] by a [***]:

(a) such customer:

(i) does not [***] Stack DRAM Products in any [***] and does not [***] for use in the [***]; and

(ii) is not a [***] in a [***] Micron or any of Micron's Affiliates (except where such customer is a [***] in a [***] Micron or any of Micron's Affiliates [***]); and

(b) all Stack DRAM Products to [***]:

(i) have a [***] of [***] (wherein a [***] is the [***] of the [***], so that [***] the [***] for the relevant [***], and

(ii) are not [***] that has been in [***] for [***] after [***].

"**Foundry Customer Adjusted Revenues**" means the difference of A minus B, wherein "A" equals the [***] for a [***]; and "B" equals the [***], if any.

"**Foundry Customer Products**" means DRAM Products manufactured by NTC for a Foundry Customer where such products are provided to such Foundry Customer for resale by or on behalf of that Foundry Customer or for internal use by that Foundry Customer.

"**GAAP**" means, with respect to Micron, United States generally accepted accounting principles, and with respect to NTC, Republic of China generally accepted accounting principles, in each case, as consistently applied by the Party for all periods at issue.

"**Governmental Entity**" means any governmental authority or entity, including any agency, board, bureau, commission, court, municipality, department, subdivision or instrumentality thereof.

"**Gross Revenues**" means, with respect to a Stack DRAM Product or Stack DRAM Module, the gross proceeds actually received by NTC or its Affiliate for the sale or other transfer of such Stack DRAM Product or Stack DRAM Module to a Third Party that is not an Affiliate, less any credits, discounts, returns and rebates actually applied or allowed or refunds actually given with respect to such Stack DRAM Product or Stack DRAM Module; *provided, however*, that Gross Revenues cannot be less than zero.

"**Internal Qualification**" means, with respect to the 68nm Process Node, March 26, 2008, and with respect to the 50nm Process Node, June 15, 2009.

"**IP Rights**" means copyrights, rights in trade secrets, Mask Work Rights and pending applications or registrations of any of the foregoing anywhere in the world. The term "IP Rights" does not include any Patent Rights or rights in trademarks.

"**Joint Venture Documents**" means (i) the Master Agreement, (ii) the documents, agreements and instruments referred to in Articles 5 and 7 of such Master Agreement, (iii) the Omnibus IP Agreement, dated as of the date hereof, by and between the Parties (the "**IP Omnibus Agreement**"), and (iv) the documents, agreements and instruments referred to in Articles II and III of the IP Omnibus Agreement.

"**Mainstream Stack DRAM Product**" means, for a [***], the particular Stack DRAM Product manufactured on the 68nm Process Node or the 50nm Process Node, as the context dictates, by [***], of which [***] the [***] by unit [***] which are manufactured on the same Process Node.

"**Mask Work Rights**" means rights under the United States Semiconductor Chip Protection Act of 1984, as amended from time to time, or under any similar equivalent laws in countries other than the United States.

"**Master Agreement**" means that certain Master Agreement, dated as of the date hereof, among Micron, MNL, Numonyx B.V., Micron Semiconductor Asia Pte. Ltd., a private limited company organized under the laws of Singapore, Micron Technology Asia Pacific, Inc., an Idaho corporation, NTC, and Inotera Memories, Inc. (Inotera Memories, Inc. [Translation from Chinese]), a company incorporated under the laws of the ROC ("**IMI**").

"**Micron**" shall have the meaning set forth in the preamble to this Agreement.

"**Micron IP Royalties**" mean any royalties owed pursuant to Section 4.2.

"**Micron-NTC Mutual NDA**" means the Micron-NTC Mutual Nondisclosure Agreement entered into by and between Micron and NTC on even date herewith.

"**Mutual Confidentiality Agreement**" means the Second Amended and Restated Mutual Confidentiality Agreement dated November 26, 2008, among Micron, Micron's Subsidiaries (as defined therein), Micron Semiconductor B.V., a private limited liability company organized under the laws of the Netherlands ("**MNL**"), NTC, NTC's Subsidiaries (as defined therein), IMI, and MeiYa Technology Corporation, a company incorporated under the laws of the ROC, as amended by Amendment No. 1 on April 9, 2010, and terminated pursuant to the IP Omnibus Agreement as of the Amendment Date.

"**Nan Ya Plastics**" means Nan Ya Plastics Corporation, a company incorporated under the laws of the ROC.

"**New Finance Agreement**" means that certain New Finance Agreement, dated as of the date hereof, by and among Micron, MNL, Numonyx B.V., MSA, MTT, IMI and Nan Ya Plastics.

"**NTC Products**" means Stack DRAM Products and/or Stack DRAM Modules, the design for which (i) is owned by NTC either solely or jointly with Micron, or (ii) is licensed by Micron to NTC pursuant to this Agreement.

"**NTC Qualified Fab**" means NTC's semiconductor manufacturing facility located at No. 98 Nanlin Rd., Taishan District, New Taipei City, Taiwan, ROC (i.e., NTC's Fab 3A) but only for so long as (i) such facility is [***] and (ii) no other [***] has a [***] or [***], directly or indirectly, [***] any of the [***] in such facility. For purposes of this definition, a [***] shall not be considered the type of [***] described in subsection (ii) above.

"**Numonyx B.V.**" means Numonyx Holdings B.V., a private limited liability company organized under the laws of the Netherlands.

"**Original Agreement**" shall have the meaning set forth in the Recitals to this Agreement.

"**Patent Rights**" means all rights associated with any and all issued and unexpired patents and pending patent applications in any country in the world, together with any and all divisionals, continuations, continuations-in-part, reissues, reexaminations, extensions, foreign counterparts or equivalents of any of the foregoing, wherever and whenever existing.

"**Probe Testing**" means testing, using a wafer test program as set forth in the applicable specifications, of a wafer that has completed all processing steps deemed necessary to complete the creation of the desired Stack DRAM integrated circuits in the die on such wafer, the purpose of which test is to determine how many and which of the die meet the applicable criteria for such die set forth in the specifications.

"**Process Node**" means a collection of process technology and equipment that enables the production of semiconductor wafers for a particular minimum repeatable half pitch of a device (minimum physical feature size or line width) and often designated by the size of such pitch (*e.g.*, the 68 nm Process Node or the 50 nm Process Node, etc.).

"**Recoverable Taxes**" shall have the meaning set forth in Section 4.8(a).

"**ROC**" means the Republic of China.

"**Software**" means computer program instruction code, whether in human-readable source code form, machine-executable binary form, firmware, scripts, interpretive text, or otherwise. The term "Software" does not include databases and other information stored in electronic form, other than executable instruction codes or source code that is intended to be compiled into executable instruction codes.

"**Stack DRAM**" means dynamic random access memory cells that function by using a capacitor arrayed predominantly above the semiconductor substrate.

"**Stack DRAM Design**" means the particular DRAM Product and corresponding design components, materials, and information specified in Schedule 2.

"**Stack DRAM Module**" means one or more Stack DRAM Products in a package or module (whether as part of a SIMM, DIMM, multi-chip package, memory card or other memory module or package).

"**Stack DRAM Product**" means any memory device comprising Stack DRAM, whether in die or wafer form, manufactured by using the 68nm Process Node or the 50nm Process Node that implements Transferred Technology licensed hereunder.

"**Tax**" or "**Taxes**" means any federal, state, local or foreign net income, gross income, gross receipts, sales, use ad valorem, transfer, franchise, profits, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, customs, duties or other type of fiscal levy and all other taxes, governmental fees, registration fees, assessments or charges of any kind whatsoever, together with any interest and penalties, additions to tax or additional amounts imposed or assessed with respect thereto.

"**Taxing Authority**" means any Governmental Entity exercising any authority to impose, regulate or administer the imposition of Taxes.

"**Term**" shall have the meaning set forth in Section 8.1.

"**Third Party**" means any Person other than NTC or Micron.

"**Transferred Technology**" means the information and deliverables described on Schedule 1 for the 68nm and 50nm Process Nodes developed by Micron as of the Effective Date for the manufacture of Stack DRAM Products and the information and deliverables described on Schedule 2 for the Stack DRAM Design identified thereon developed by Micron as of the Effective Date, excluding any of the foregoing that cannot be shared with NTC

without further permission or consent of, further payment to, or breach of agreement with, any Third Party.

"**TTLA Agreements**" means (a) the Technology Transfer and License Option Agreement for 20nm Process Node dated as of the date hereof, between the Parties, as may be amended from time to time, and (b) the Third Amended and Restated Technology Transfer and License Agreement dated as of the date hereof, between the Parties, as may be amended from time to time.

1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (1) all references to Sections, Articles, Exhibits, Appendices or Schedules are to Sections, Articles, Exhibits, Appendices or Schedules of or to this Agreement, (2) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with GAAP, (3) words in the singular include the plural and vice versa, (4) the term "**including**" means "including without limitation," and (5) the terms "**herein**," "**hereof**," "**hereunder**" and words of similar import shall mean references to this Agreement as a whole and not to any individual section or portion hereof. Unless otherwise denoted, all references to $ or dollar amounts will be to lawful currency of the United States of America. All references to "**day**" or "**days**" will mean calendar days.

(b) No provision of this Agreement will be interpreted in favor of, or against, either Party by reason of the extent to which (1) such Party or its counsel participated in the drafting thereof or (2) any such provision is inconsistent with any prior draft of this Agreement or such provision.

## ARTICLE 2

## LICENSE GRANT

2.1 Micron Grant to NTC. Subject to the terms and conditions of this Agreement, Micron grants to NTC a [***], royalty-bearing (subject to Section 4.2(d)) license under Micron's IP Rights in the Transferred Technology to [***] of the [***]:

(a) to [***] and [***], solely in the [***] using the [***]; and

(b) to [***] and/or [***] in accordance with the foregoing.

2.2 Reservations of Rights. Except as expressly set forth in Section 2.1, Micron reserves all of its rights, title and interest in, to and under the Transferred Technology. No right or license is granted under this Agreement by Micron to NTC expressly, impliedly, by estoppel or otherwise, in, to or under any Patent Rights, or, except as expressly set forth in

Section 2.1, any IP Rights, material, technology or other intellectual property owned by or licensed to Micron or any of its Affiliates, and NTC shall not exploit any IP Rights of Micron beyond the scope of the rights expressly licensed under Section 2.1.

## ARTICLE 3

## TRANSFER OF TECHNOLOGY

3.1 Delivery of Micron Transferred Technology to NTC. NTC agrees that Micron has completed and fulfilled its obligations in all respects to deliver to NTC the Transferred Technology.

3.2 Preproduction Wafers. NTC agrees that Micron has completed and fulfilled its obligations in all respects to provide NTC with preproduction wafers.

3.3 Engineering Services. NTC agrees that Micron has completed and fulfilled its obligations in all respects to provide NTC with engineering services and no further services are required.

## ARTICLE 4

## PRICES AND PAYMENTS

4.1 License Fees. For the rights granted to NTC under the Transferred Technology as set forth in Section 2.1, Micron invoiced NTC for the amounts set forth on Schedule 4, and NTC paid the amounts due thereon.

4.2 Royalties for Transferred Technology.

(a) In addition to the amounts already paid for the transfer of Transferred Technology under Section 4.1, NTC shall pay to Micron royalties of [***].

(b) In addition to the amounts already paid for the transfer of Transferred Technology under Section 4.1, NTC shall pay to Micron royalties of [***].

(c) If a Stack DRAM Product or Stack DRAM Module originally manufactured by a NTC Qualified Fab is sold or otherwise transferred to an Affiliate of NTC that is either an end user or an original equipment manufacturer ("**OEM**"), then Gross Revenues will also include such sales or other transfer to the Affiliate and the Gross Revenues used in the calculation of royalties under Section 4.2(a) or (b) shall be the greater of (i) the [***] of the [***] the same [***] as sold in the [***] to [***] that are not [***] and (ii) the [***] associated with the [***] to the [***], as applicable.

(d) Micron IP Royalties payable under this Section 4.2 are due only for sales or transfers of Stack DRAM Products or Stack DRAM Modules occurring before [***].

4.3 Royalty Reporting and Payment. Within sixty (60) days following the end of each [***] for so long as any Micron IP Royalties are payable hereunder, NTC shall submit to Micron a written report, which is certified by NTC's chief financial officer as complete and correct, setting forth in reasonable detail, the [***] by NTC and the applicable Micron IP Royalties due for the immediately preceding [***]. NTC shall pay to Micron all Micron IP Royalties due for such [***] contemporaneously with the submission of such report in accordance with Section 4.5. NTC shall cause each of its Affiliates (other than NTC Subsidiaries) who dispose of Stack DRAM Product in a manner that causes Micron IP Royalties to be due to provide a written report, which is certified by each such Affiliate's chief financial officer as complete and correct, setting forth in reasonable detail such Affiliate's dispositions of Stack DRAM Product and corresponding Micron IP Royalties for the [***] that is the subject of each of the foregoing reports of NTC. NTC shall provide a copy of each report from an Affiliate (other than NTC Subsidiaries) to Micron with submission of NTC's report.

4.4 Audit Rights and Records. Micron shall have the right to have an independent Third Party auditor audit [***], upon reasonable advance written notice, during normal business hours and on a confidential basis subject to an obligation of confidentiality, all records and accounts of NTC relevant to the calculation of Micron IP Royalties in the [***] period immediately preceding the date of the audit; *provided however*, that NTC shall not be obligated to provide any records and book of accounts existing prior to the Effective Date. NTC shall, for at least a period of [***] from the date of their creation, keep complete and accurate records and books of accounts concerning all transactions relevant to calculation of Micron IP Royalties in sufficient detail to enable a complete and detailed audit to be conducted. In the event any such audit determines that Micron IP Royalties have been underpaid by more than [***] in any [***], NTC shall promptly pay Micron such underpayment amount, together with interest, and reimburse Micron for its reasonable costs and expenses of the audit.

4.5 Reports and Invoices; Payments.

(a) All reports and invoices under this Agreement may be sent by any method described in Section 9.1 or electronically with hardcopy confirmation sent promptly thereafter by any method described in Section 9.1. Such reports and invoices should be sent to the following contacts or such other contact as may be specified hereafter pursuant to a notice sent in accordance with Section 9.1:

(i) Invoices to NTC:

[***]
Corporate Planning Division
Nanya Technology Corp.
Hwa-Ya Technology Park 669, Fuhsing 3 Rd. Kueishan, Taoyuan, Taiwan, R. O. C.
Fax: [***]
E-Mail: [***]

(ii) Reports to Micron:

[***]
8000 S. Federal Way
P.O. Box 6, MS 1-720
Boise, Idaho, USA 83707-0006
Fax: [***]
Email: [***]

(b) All amounts owed by a Party under this Agreement are stated, calculated and shall be paid in United States Dollars ($ U.S.).

(c) Payment is due on all amounts properly invoiced within thirty (30) days of receipt of invoice. All payments made under this Agreement shall be made by wire transfer to a Micron bank account designated by the following person or by such other person designated by notice:

Payments to Micron:

[***]
8000 S. Federal Way
P.O. Box 6, MS 1-107
Boise, Idaho, USA 83707-0006
Fax: [***]
Email: [***]

4.6 Interest. Any amounts payable to Micron hereunder and not paid within the time period provided shall accrue interest, from the time such payment was due until the time payment is actually received, at the rate of [***], compounded annually or the highest rate permitted by Applicable Law, whichever is lower.

4.7 Taxes.

(a) All sales, use and other transfer Taxes imposed directly on or solely as a result of the services, rights licensed or technology transfers or the payments therefor provided herein shall be stated separately on the service provider's, licensor's or technology

transferor's invoice, collected from the service recipient, licensee or technology transferee and shall be remitted by service provider, licensor or technology transferor to the appropriate Taxing Authority ("**Recoverable Taxes**"), unless the service recipient, licensee or technology transferee provides valid proof of tax exemption prior to the Effective Date or otherwise as permitted by Applicable Law prior to the time the service provider, licensor or technology transferor is required to pay such Taxes to the appropriate Taxing Authority. When property is delivered, rights granted and/or services are provided or the benefit of services occurs within jurisdictions in which collection and remittance of Taxes by the service recipient, licensee or technology transferee is required by Applicable Law, the service recipient, licensee or technology transferee shall have sole responsibility for payment of said Taxes to the appropriate Taxing Authority. In the event any Taxes are Recoverable Taxes and the service provider, licensor or technology transferor does not collect such Taxes from the service recipient, licensee or technology transferee or pay such Taxes to the appropriate Governmental Entity on a timely basis, and is subsequently audited by any Taxing Authority, liability of the service recipient, licensee or technology transferee will be limited to the Tax assessment for such Recoverable Taxes, with no reimbursement for penalty or interest charges or other amounts incurred in connection therewith. Except as provided in Section 4.7(b), Taxes other than Recoverable Taxes shall not be reimbursed by the service recipient, licensee or technology transferee, and each Party is responsible for its own respective income Taxes (including franchise and other Taxes based on net income or a variation thereof), Taxes based upon gross revenues or receipts, and Taxes with respect to general overhead, including but not limited to business and occupation Taxes, and such Taxes shall not be Recoverable Taxes.

(b) In the event that the service recipient, licensee or technology transferee is prohibited by Applicable Law from making payments to the service provider, licensor or technology transferor unless the service recipient, licensee or technology transferee deducts or withholds Taxes therefrom and remits such Taxes to the local Taxing Authority, then the service recipient, licensee or technology transferee shall [***] and shall pay to the service provider, licensor or technology transferor [***] and, in the case of [***], after the [***] of any [***] as a result of the payment to the service provider, licensor or technology transferor of [***] the service provider, licensor or technology transferor retains [***] of any such [***] of any such [***].

4.8 Payment Delay. Notwithstanding anything to the contrary in this Agreement, if requested by Micron by notice in accordance with Section 9.1, NTC will delay making any payments hereunder when due until notified by Micron in accordance with Section 9.1.

## ARTICLE 5

## OTHER INTELLECTUAL PROPERTY MATTERS

5.1 Intellectual Properties Retained. Nothing in this Agreement shall be construed to transfer ownership of any intellectual property rights from one Party to another Party.

5.2 [***] Relating to Foundry Customers. In the event that (i) NTC begins using the Transferred Technology to design, develop, manufacture, and/or test Foundry Customer Products for a Third Party [***] such Third Party [***] as set forth in [***] above, and (ii) such Third Party [***] a [***] in a [***] or any of [***] except where such Third Party [***] in a [***], the Parties agree that:

(a) NTC shall not have any right under this Agreement to [***] for such Third Party for so long as such Third Party [***]; and

(b) Micron shall not [***] based solely on [***] using the [***] for such Third Party [***] such Third Party [***] until [***] such Third Party [***].

## ARTICLE 6

## WARRANTIES; DISCLAIMERS

6.1 No Implied Obligation or Rights. Nothing contained in this Agreement shall be construed as:

(a) a warranty or representation that any manufacture, sale, lease, use or other disposition of any products based upon any of the IP Rights licensed or technology transferred hereunder will be free from infringement, misappropriation or other violation of any Patent Rights, IP Rights or other intellectual property rights of any Person;

(b) an agreement to bring or prosecute proceedings against Third Parties for infringement, misappropriation or other violation of rights or conferring any right to bring or prosecute proceedings against Third Parties for infringement, misappropriation or other violation of rights; or

(c) conferring any right to use in advertising, publicity, or otherwise, any trademark, trade name or names, or any contraction, abbreviation or simulation thereof, of either Party.

6.2 Third Party Software. Exploitation of any of the rights licensed or technology transferred hereunder may require use of Software owned by a Third Party and not subject to any license granted under any of the other agreements between Micron and NTC. Nothing in this Agreement shall be construed as granting to any Party, any right, title or interest in,

to or under any Software owned by any Third Party. Except as may be specified otherwise in any of the other Joint Venture Documents, any such Software so required is solely the responsibility of each of the Parties. Moreover, should a Party who transfers technology under this Agreement discover after such transfer that it has provided Software to the other Party that it was not entitled to provide, such providing Party shall promptly notify the other Party and the recipient shall return such Software to the providing Party and not retain any copy thereof.

6.3 Disclaimer. EACH OF NTC AND MICRON DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT WITH RESPECT TO ANY TECHNOLOGY, IP RIGHTS, MICRON TRANSFERRED TECHNOLOGY, OR OTHER RIGHTS OR MATERIALS LICENSED OR TRANSFERRED UNDER THIS AGREEMENT. NEITHER NTC NOR MICRON MAKES ANY WARRANTIES WITH RESPECT TO THE OTHER PARTY'S ABILITY TO: (A) USE ANY OF THE FOREGOING, OR (B) MANUFACTURE OR HAVE MANUFACTURED ANY PRODUCTS BASED THEREON. NEITHER NTC NOR MICRON MAKES ANY WARRANTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, THAT THE USE, PRACTICE OR COMMERCIAL EXPLOITATION OF ANYTHING PROVIDED PURSUANT TO THIS AGREEMENT WILL NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

## ARTICLE 7

## LIMITATION OF LIABILITY

7.1 LIMITATION OF LIABILITY. IN NO EVENT SHALL ONE PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER INDIRECT DAMAGES OR ANY PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY OF LIABILITY. THESE LIMITATIONS SHALL APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS ON POTENTIAL LIABILITIES SET FORTH HEREIN ARE AN ESSENTIAL ELEMENT IN THE CONSIDERATION PROVIDED BY EACH PARTY UNDER THIS AGREEMENT.

## ARTICLE 8

## TERM AND TERMINATION

8.1 Term. The term of this Agreement commences on the Effective Date and continues in effect until terminated by mutual agreement of the Parties or as contemplated in another agreement between the Parties or otherwise; *provided, however*, that the amendments made to the First Amended Agreement by this Agreement commence retroactively on the Amendment Date as if this Agreement had been executed and delivered on the Amendment Date. (The period from the Effective Date until termination is the "**Term**").

8.2 Termination.

(a) In the event NTC commits a material breach of this Agreement and such breach remains uncured for more than sixty (60) days after notice of the breach, Micron may terminate this Agreement by notice to NTC.

(b) In the event that Micron terminates either of the other TTLA Agreements for uncured material breach, Micron may terminate this Agreement by notice to NTC.

(c) Micron may terminate this Agreement upon written notice to NTC in the event that (i) NTC undergoes a Change of Control, or (ii) the NTC Qualified Fab is otherwise acquired, whether *de facto* or *de jure*, by any Third Party. NTC shall provide written notice to Micron prior to such Change of Control or such acquisition by a Third Party of the NTC Qualified Fab.

(d) Micron may terminate this Agreement upon written notice to NTC in the event that one or more of the following events occur: (i) appointment of a trustee or receiver for all or any part of the assets of NTC; (ii) insolvency or bankruptcy of NTC; (iii) a general assignment by NTC for the benefit of creditor(s); or (iv) dissolution or liquidation of NTC.

(e) Micron may terminate this Agreement upon written notice to NTC in the event of a breach or default by Nan Ya Plastics of any of its obligations set forth in Sections 1, 2 or 3 of the New Finance Agreement.

8.3 Effects of Termination.

(a) Termination of this Agreement hereunder shall not affect any of the Parties' respective rights accrued or obligations owed before termination. In addition, the following shall survive termination for any reason: Articles 1, 5, 6, 7 and 9 and Sections 4.3 through 4.7 and 8.3.

(b) Upon termination of this Agreement, NTC shall:

(i) cease all exploitation of the rights terminated, except that NTC may continue to manufacture any work in process at the time of termination, and, for up to [***] after termination, sell any Stack DRAM Products or Stack DRAM Modules that were finished goods at the time of termination or become finished goods made from work in process at the time of termination subject to payment of any applicable Micron IP Royalties thereon consistent with Sections 4.2 through 4.8;

(ii) on or before the end of such [***] period, destroy all copies of the Transferred Technology licensed to NTC, in whatever form received, reproduced or stored, including redacting any such material from any derivatives thereof; and

(iii)certify to Micron that such exploitation and destruction is complete.

## ARTICLE 9

## MISCELLANEOUS

9.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given upon (a) transmitter's confirmation of a receipt of a facsimile transmission, (b) confirmed delivery by a standard overnight carrier or when delivered by hand, or (c) delivery in person, addressed at the following addresses (or at such other address for a party as shall be specified by like notice):

If to NTC: Nanya Technology Corporation
Hwa-Ya Technology Park 669
Fuhsing 3 RD. Kueishan
Taoyuan, Taiwan, ROC
Attention: Legal department
Fax: 886.3.396.2226

If to Micron: Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attention: General Counsel
Fax: 208.368.1309

9.2 Waiver. The failure at any time of a Party to require performance by the other Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by the other Party constitute a waiver

of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

9.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto*; provided, however*, that neither this Agreement nor any right or obligation hereunder may be assigned or delegated by either Party in whole or in part to any other Person, including, without limitation, by merger, operation of law, or through the transfer of all or substantially all of the equity, assets, or business of a Party to this Agreement, without the prior written consent of the non-assigning Party. Any purported assignment in violation of the provisions of this Section 9.3 shall be null and void and have no effect.

9.4 Third Party Rights. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any Person, other than the Parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision

9.5 Force Majeure. The Parties shall be excused from any failure to perform any obligation hereunder to the extent such failure is caused by a Force Majeure Event.

9.6 Choice of Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, USA, without giving effect to the principles of conflict of laws thereof.

9.7 Jurisdiction; Venue. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be brought in a state or federal court of competent jurisdiction located in the State of California, USA, and each of the Parties to this Agreement hereby consents and submits to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

9.8 Headings. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

9.9 Export Control. Each Party agrees that it will not knowingly: (a) export or re-export, directly or indirectly, any technical data (as defined by the U.S. Export Administration Regulations) provided by the other Party or (b) disclose such technical data for use in, or export or re-export directly or indirectly, any direct product of such technical data, including Software, to any destination to which such export or re-export is restricted or prohibited by United States or non-United States law, without obtaining prior

authorization from the U.S. Department of Commerce and other competent Government Entities to the extent required by Applicable Laws.

9.10 Entire Agreement. This Agreement, together with its Schedules and the agreements and instruments expressly provided for herein, including the applicable terms of the other Joint Venture Documents, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements, amendments and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof.

9.11 Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Laws or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

9.12 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**< Signature pages follow >**

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first above written.

**MICRON TECHNOLOGY, INC.**

By: /s/ Michael W. Sadler

Name: Michael W. Sadler

Title: Vice President of Corporate Development

**NANYA TECHNOLOGY CORPORATION**

By: /s/ Charles Kau
Name: Charles Kau
Title: President

**[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT**



# THIRD AMENDED AND RESTATED TECHNOLOGY TRANSFER AND LICENSE AGREEMENT

This **THIRD AMENDED AND RESTATED TECHNOLOGY TRANSFER AND LICENSE AGREEMENT** (this "**Agreement**"), is made and entered into as of this 17th day of January, 2013, by and between Micron Technology, Inc, a Delaware corporation ("**Micron**"), and Nanya Technology Corporation (Nanya Technology Corporation [Translation from Chinese]), a company incorporated under the laws of the Republic of China ("**NTC**"). (Micron and NTC are referred to in this Agreement individually as a "**Party**" and collectively as the "**Parties**").

## RECITALS

A. Micron currently designs and manufactures Stack DRAM Products (as defined herein) and develops Process Technology (as defined herein) therefor. Micron previously developed Process Nodes for 68nm and 50nm geometries along with certain Stack DRAM product designs associated therewith and licensed these Process Nodes and product designs to NTC pursuant to the Technology Transfer and License Agreement for 68-50nm Process Nodes dated April 21, 2008, as amended. In addition, NTC and Micron engaged in joint development and/or optimization of Process Technology for process nodes of dimensions less than 50nm and joint development of Stack DRAM Designs for Stack DRAM Products to be manufactured on such process nodes of less than 50nm pursuant to the JDP Agreement and the JDP-CSA Agreement (as defined herein). This joint development activity was based on and incorporated certain technology derived from the 68nm and 50nm Process Nodes. This joint development activity yielded the 42nm and 30nm JDP Process Nodes otherwise known among the Parties as the 70 Series and 80 Series nodes respectively.

B. To effectuate their desires contemporaneously with their formation of their joint venture MeiYa Technology Corporation, a company limited by shares organized under the laws of the Republic of China ("**MeiYa**"), Micron licensed NTC under Background IP and certain Foundational Know-How for use in connection with the design, development and manufacture of certain Stack DRAM Products using JDP Process Nodes pursuant to that certain Technology Transfer and License Agreement between Micron and NTC dated April 21, 2008 ("**Original Agreement**"). Pursuant to the Original Agreement, NTC licensed NTC Foundational Know-How that was transferred or disclosed to Micron for the design, development and manufacture of certain Stack DRAM Products.

C. NTC and an Affiliate of Micron became parties to that certain Joint Venture Agreement dated as of November 26, 2008 involving the ownership and operations of Inotera Memories, Inc., a company limited by shares under the laws of the Republic of China ("**IMI**"), and in connection therewith combined their ownership and operations of MeiYa with that of IMI such that MeiYa ceased to exist.

D. The Parties amended and restated the Original Agreement on November 26, 2008, to account for the transactions contemplated by the Joint Venture Documents (as defined below) related to IMI upon the terms and conditions set forth in that amendment (the "**First Amended Agreement**").

E. The Parties amended and restated the First Amended Agreement on April 9, 2010, to account for, among other items, certain changes related to the JDP-CSA Agreement, entered into on even date therewith, and certain changes to the royalty provisions (the "**Second Amended and Restated Technology Transfer and License Agreement**").

F. The Parties now desire to amend and restate the Second Amended and Restated Technology Transfer and License Agreement upon the terms and conditions set forth herein.

## AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and agreements herein set forth, the Parties, intending to be legally bound, hereby agree as follows.

## ARTICLE 1

## DEFINITIONS; CERTAIN INTERPRETATIVE MATTERS

1.1 Definitions.

"**Adjusted Revenues**" means (a) with respect to [***], the difference of A minus B, wherein "A" equals the [***] from the [***] of [***] and "B" equals [***] associated with [***], if any, *provided, however*, that Adjusted Revenues (i) shall not include any Foundry Customer Adjusted Revenues, and (ii) cannot be less than zero; and (b) with respect to [***], (x) the difference of C minus D, wherein "C" equals the [***] from the [***] of [***] and "D" equals the [***] associated with [***], *provided, however,* that Adjusted Revenues cannot be less than zero.

"**Affiliate**" means, with respect to any specified Person, any other Person that directly or indirectly, including through one or more intermediaries, controls, or is controlled by, or is under common control with such specified Person; and the term "**affiliated**" has a meaning correlative to the foregoing.

"**Agreement**" shall have the meaning set forth in the preamble to this Agreement.

"**Applicable Law**" means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"**Amendment Date**" means January 1, 2013.

"**Background IP**" means (a) Process Technology for the 68 nm and 50 nm Primary Process Nodes used by Micron as of the Effective Date to manufacture and test Stack DRAM Products, including the associated Probe Testing programs and methodologies, and to the extent required to support baseline quality levels on Commodity Stack DRAM Products and JEDEC standard Stack DRAM Modules, assembly testing, FT, Burn-In, and module testing methodologies and programs or algorithms, as such Process Technology is described in the information listed on Schedule 1**,** (b) the Stack DRAM Designs for Commodity Stack DRAM Products made on such Process Nodes, which designs are listed on Schedule 2, and the information relating to such designs listed on Schedule 2 to the extent existing as of the Effective Date, and (c) the process of record and model of record associated with the foregoing as they exist as of the Effective Date, including, in each case (a), (b) and (c), the associated IP Rights of Micron therein, but excluding (i) anything that cannot be shared with NTC without further permission or consent of, further payment to, or breach of agreement with, any Third Party and (ii) any Patent Rights.

"**BEOL Costs**" means the back-end assembly (including module and packaging) and test costs of NTC incurred after Probe Testing of the Stack DRAM wafer from which such Stack DRAM Product is made.

"**Burn-In**" means a mechanism to stress and/or burn the DRAM Products in wafer and/or package forms, as applicable, to help predict or ensure the early life failure can be screened out in the product qualification and production stage.

"**Burn-In Documen**t" means a document that describes the specification of voltage and test pattern settings in the Burn-In test program. The Burn-In Document also describes the methodology of how the voltage and test pattern settings are optimized.

"**Change of Control**" means, with respect to a Party, (i) any Third Party becoming the beneficial owner of securities of such Party representing more than fifty percent (50%) of the total of all then outstanding voting securities; (ii) a merger or consolidation of such Party with or into a Third Party, other than a merger or consolidation that would result in the holders of the voting securities immediately prior thereto holding securities that represent immediately after such merger or consolidation more than fifty percent (50%) of the total combined voting power of the entity that survives such merger or consolidation or the parent of the entity that survives such merger or consolidation; or (iii) the sale or disposition of all or substantially all of the assets of such Party to a Third Party, wherein the holders of such Party's outstanding voting securities immediately before such sale do not, immediately after sale, own or control directly or indirectly equity representing a majority of the outstanding voting securities of such Third Party.

"**Commodity Stack DRAM Products**" means Stack DRAM Products for system main memory for computing or Mobile Devices, in each case that are fully compliant with one or more Industry Standard(s).

"**Confidential Information**" means that information described in Section 8.1 deemed to be "Confidential Information" under the Mutual Confidentiality Agreement if disclosed on or after the Effective Date and prior to the Amendment Date, or information that meets the definition of Confidential Information as set forth in the Micron-NTC Mutual NDA if provided, disclosed, obtained or accessed on or after the Amendment Date.

"**Contractor**" means a Third Party who (a) is contracted by a Party on or after the Effective Date and prior to the Amendment Date in connection with work to be conducted by such Party under a SOW, (b) has agreed to assign to such contracting Party all rights in and to any inventions, discoveries, improvements, processes, copyrightable works, mask works, trade secrets or other technology that are conceived or first reduced to practice, whether patentable or not, as a result of any performance by such Third Party of any obligations of such Party under a SOW, and all Patent Rights, IP Rights and other intellectual property rights in the foregoing, and (c) has agreed to grant a license to such contracting Party, with the right to sublicense of sufficient scope that includes the other Party, under all Patent Rights, IP Rights and other rights of the Third Party reasonably necessary for such contracting Party and the other Party to exploit the work product created by the Third Party consistent with the rights granted by the contracting Party to the other Party under the Joint Venture Documents.

"**Control**" (whether capitalized or not) means the power or authority, whether exercised or not, to direct the business, management and policies of a Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, which power or authority shall conclusively be presumed to exist upon possession of beneficial ownership or power to direct the vote of more than fifty percent (50%) of the votes entitled to be cast at a meeting of the members, shareholders or other equity holders of such Person or power to control the composition of a majority of the board of directors or like governing body of such Person; and the terms "**controlling**" and "**controlled**" have meanings correlative to the foregoing.

"**Controlled Facility**" of a company means (i) a wafer fabrication facility owned by such company, (ii) a wafer fabrication facility owned by an entity that is Controlled by such company, and/or (iii) a wafer fabrication facility for which such company has a contractual right to receive at least [***] percent ([***]%) of the output of such wafer fabrication facility for at least [***] consecutive months.

"**Density**" means the physical density of (i.e., total number of bits that can be stored in) a Stack DRAM Product.

"**Design Qualification**" means, with respect to each Stack DRAM Design or Stack DRAM Module, when (a) the corresponding Stack DRAM Product can be made fully compliant with any applicable Industry Standard(s) (if any) and the defects per million die quality level meets or exceeds the level necessary for high volume shipments for desktop and notebook personal computers or Mobile Devices, or (b) such other or additional parameters as may be defined in the Design SOW as "Design Qualification" for such Stack DRAM Design, such as meeting or exceeding specified

measurements during tests specified under "Design Qualification" in Schedule 8 of the JDP Agreement or the JDP-CSA Agreement, as applicable, for computer server or other applications specified in the applicable Design SOW.

"**Design SOW**" means any SOW primarily directed to the development of a new Stack DRAM Design, modification of a pre-existing Stack DRAM Design, development of a new Stack DRAM Module or modification of a pre-existing Stack DRAM Module prior to the Amendment Date.

"**DRAM Product**" means any stand-alone semiconductor device that is a dynamic random access memory device and that is designed or developed primarily for the function of storing data, in die, wafer or package form.

"**Effective Date**" means April 21, 2008, the effective date of the Original Agreement.

"**Existing Entity**" means with respect to Micron or NTC, the facilities, entities, partnerships or joint ventures of Micron or NTC listed on Schedule 3, and the continuation or extension of such existing facilities, entities, partnerships or joint ventures, only for so long as they remain an Affiliate of either Micron or NTC, as the case may be.

"**First Amended Agreement**" has the meaning set forth in the Recitals to this Agreement.

"**Force Majeure Event**" means the occurrence of an event or circumstance beyond the reasonable control of a Party and includes, without limitation, (a) explosions, fires, flood, earthquakes, catastrophic weather conditions, or other elements of nature or acts of God; (b) acts of war (declared or undeclared), acts of terrorism, insurrection, riots, civil disorders, rebellion or sabotage; (c) acts of federal, state, local or foreign Governmental Entity; (d) labor disputes, lockouts, strikes or other industrial action, whether direct or indirect and whether lawful or unlawful; (e) failures or fluctuations in electrical power or telecommunications service or equipment; and (f) delays caused by the other Party or third-party nonperformance (except for delays caused by a Party's Contractors, subcontractors or agents).

"**Foundational Know-How**" means, with respect to each Party, any semiconductor process development technologies, designs, layouts, methodologies, algorithms or programs, including Probe Testing, assembly, FT, and Burn-In, that are used by such Party in its operations at any time on or after the Effective Date and before the Amendment Date for the design, development, manufacture, or test through Design Qualification or Process Qualification, as applicable, of DRAM Products or DRAM Modules that comply with an Industry Standard and that can be shared with the other Party under the terms of this Agreement without any further permission or consent of, further payment to, or breach of agreement with, any Third Party and including all IP rights in the above; *provided, however,* the term "Foundational Know-How" does not include (a) any semiconductor process development technologies, designs, layouts, methodologies or algorithms that (i) are first created by a Party for use in connection with the manufacture or testing of NAND

Flash Memory Products or Imaging Products and are not used in DRAM Products or DRAM Modules or (ii) that constitute JDP Work Product or a JDP Invention or any IP Rights therein, or (b) any Patent Rights.

"**Foundry Customer**" means a Third Party customer for Stack DRAM Products, the [***] by the [***] to the [***] by a [***]:

(a) such customer:

(i) does not [***] Stack DRAM Products in any [***] and does not develop any [***] for use in the [***]; and

(ii) is not a [***] in a [***] Micron or any of Micron's Affiliates (except where such customer is a [***] in a [***] Micron or any of Micron's Affiliates [***]; and

(b) all Stack DRAM Products to [***]:

(x) have a [***] that is [***] (wherein a [***] is the [***] of the [***] with respect to a [***], so that [***] the [***] for the relevant [***], and

(y) are not [***] that has been in [***] for [***] after [***].

"**Foundry Customer Adjusted Revenues**" means the difference of A minus B, wherein "A" equals the [***] received from the [***] for a [***]; and "B" equals the [***] associated with the [***], if any.

"**Foundry Customer Products**" means Stack DRAM Products manufactured by NTC for a Foundry Customer where such products are provided to such Foundry Customer for resale by or on behalf of that Foundry Customer or for internal use by that Foundry Customer.

"**FT**" means final tests including high and low temperature functional tests and Burn-In test for a DRAM Product in package form.

"**GAAP**" means, with respect to Micron, United States generally accepted accounting principles, and with respect to NTC, Republic of China generally accepted accounting principles, in each case, as consistently applied by the Party for all periods at issue.

"**Gross Revenues**" means, with respect to a Stack DRAM Product or Stack DRAM Module, the gross proceeds actually received by NTC or its Affiliate for the sale or other transfer of such Stack DRAM Product or Stack DRAM Module to a Third Party that is not an Affiliate, less any credits, discounts, returns and rebates actually applied or allowed or refunds actually given with respect to such Stack DRAM Product or Stack DRAM Module; *provided, however*, that Gross Revenues cannot be less than zero.

"**Governmental Entity**" means any governmental authority or entity, including any agency, board, bureau, commission, court, municipality, department, subdivision or instrumentality thereof.

"**IMI**" has the meaning set forth in the Recitals to this Agreement.

"**Industry Standard**" means the documented technical specifications that set forth the pertinent technical and operating characteristics of a DRAM Product if such specifications are publicly available for use by DRAM manufacturers, and if (a) Micron or NTC and (b) at least [***] other DRAM manufacturers that each account for at least [***] per cent ([***]%) of the sales of the global market (as such sales/market are reported by Gartner Dataquest) for DRAM Products make commercially available products that are fully compliant with such specifications. All JEDEC specifications for system main memory for computers and/or Mobile Devices are deemed "Industry Standards."

"**Internal Qualification**" means with respect to the 42nm Process Node, October 20, 2010, and with respect to the 30nm Process Node, November 22, 2011.

"**IP Omnibus Agreement**" means that certain Omnibus IP Agreement by and between Micron and NTC entered into on even date herewith.

"**IP Rights**" means copyrights, rights in trade secrets, Mask Work Rights and pending applications or registrations of any of the foregoing anywhere in the world. The term "IP Rights" does not include any Patent Rights or rights in trademarks.

"**JDP Agreement**" means that certain Amended and Restated Joint Development Program Agreement by and between Micron and NTC effective as of November 26, 2008 and terminated pursuant to the IP Omnibus Agreement as of the Amendment Date.

"**JDP-CSA Agreement**" means that certain Joint Development Program and Cost Sharing Agreement by and between Micron and NTC effective as of April 9, 2010 and terminated pursuant to the IP Omnibus Agreement as of the Amendment Date.

"**JDP Committee**" means the committee formed and operated by Micron and NTC to govern the performance of the Parties under the JDP Agreement or the JDP-CSA Agreement prior to the Amendment Date.

"**JDP Inventions**" means all discoveries, improvements, inventions, developments, processes or other technology, whether patentable or not, that is/are conceived by one or more Representatives of one or more of the Parties in the course of activities conducted under the JDP Agreement or the JDP-CSA Agreement prior to the Amendment Date.

"**JDP IP Royalties**" means any royalties owed pursuant to Section 4.1.

"**JDP Process Nodes**" means the 42nm and 30nm Process Nodes (otherwise known as the 70 Series and 80 Series nodes respectively) developed pursuant to the JDP-CSA and including any Background IP and Micron Foundational Know How contained therein.

"**JDP Work Product**" means the tangible work product created under either the JDP Agreement or the JDP-CSA Agreement in the performance of any SOW prior to the Amendment Date, including all documentation, records, Software, methodology, drawings, masks, databases and other tangible materials created in performing any SOW, regardless of the form in which such work product is originally created or thereafter reproduced, translated, converted or stored.

"**Joint Venture Agreement**" means that certain Joint Venture Agreement, dated as of the date hereof, by and among MNL, Numonyx B.V., MTT, and NTC.

"**Joint Venture Company**" means either IMI or MeiYa, as the context dictates.

"**Joint Venture Documents**" means (i) the Master Agreement, (ii) the documents, agreements and instruments referred to in Articles 5 and 7 of such Master Agreement, (iii) the IP Omnibus Agreement, and (iv) the documents, agreements and instruments referred to in Articles II and III of the IP Omnibus Agreement.

"**Mainstream Stack DRAM Product**" means for a [***], the particular Stack DRAM Product manufactured on the 42nm Process Node or the 30nm Process Node, as the context dictates, by [***] of which [***] the [***] by unit [***] which are manufactured on the same Process Node.

"**Mask Work Rights**" means rights under the United States Semiconductor Chip Protection Act of 1984, as amended from time to time, or under any similar equivalent laws in countries other than the United States.

"**Master Agreement**" means that certain Master Agreement, dated as of the date hereof, among Micron, MNL, Numonyx B.V., MSA, MTT, NTC, and IMI.

"**MeiYa**" shall have the meaning set forth in the Recitals to this Agreement.

"**Micron**" shall have the meaning set forth in the preamble to this Agreement.

"**Micron Competitor**" means (a) [***], and any Subsidiaries of the companies set forth above; (b) any successor-in-interest of any of the companies referenced in (a) above and any successors to all or substantially all of their respective Memory Products businesses; (c) any Affiliate of any company set forth in (a) above; or (d) a company that uses its Controlled Facility to manufacture Memory Products in wafer form and that derives (either on a consolidated or standalone basis) at least [***] percent ([***]%) of its revenue from the manufacture or sale of Memory Products (based on the last fiscal year of such revenue).

"**Micron Foundry Products**" means any product, of whatever kind or nature, manufactured by Micron or by a Micron Affiliate for a Micron customer pursuant to a design owned by or licensed to such customer, and where such products are provided to such customer for resale by or on behalf of that customer or for internal use by that customer, [***] such customer is not a [***] in a [***] NTC or any of NTC's Affiliates (except where such customer is a [***] in a [***] Micron or any of Micron's Affiliates [***].

"**Micron-NTC Mutual NDA**" means the Micron-NTC Mutual Nondisclosure Agreement entered into by and between Micron and NTC on even date herewith.

"**Micron Products**" means DRAM Products and/or any other products manufactured and sold by or for Micron or any of its Affiliates the design for which (i) is owned by Micron or any of its Affiliates, (ii) was co-developed by the Parties pursuant to Design SOWs under the JDP Agreement or the JDP-CSA Agreement, or (iii) is licensed by NTC or a Third Party to Micron or any of its Affiliates.

"**Micron Qualified Fab**" means (a) a semiconductor manufacturing facility that is directly or indirectly, through one or more wholly-owned Subsidiaries, wholly-owned by Micron or operated by any Existing Entity of Micron but only for so long as such facility [***], (b) [***], and (c) any other semiconductor manufacturing facility mutually agreed in writing to be a "Micron Qualified Fab" by the Parties.

"**MNL**" means Micron Semiconductor B.V., a private limited liability company organized under the laws of the Netherlands.

"**MSA**" means Micron Semiconductor Asia Pte. Ltd., a private limited company organized under the laws of Singapore.

"**MTT**" means Micron Technology Asia Pacific, Inc., an Idaho corporation.

"**Mobile Device**" means a handheld or portable device using as its main memory one or more Stack DRAM Products that is/are compliant with an Industry Standard and that has low-power characteristics for wireless applications, such as LPDDR and LPDDR2.

"**Mutual Confidentiality Agreement**" means that certain Second Amended and Restated Mutual Confidentiality Agreement dated as of November 26, 2008, among NTC, NTC's Subsidiaries (as defined therein), Micron, Micron's Subsidiaries (as defined therein), MNL, MeiYa and IMI, as amended by Amendment No. 1 on April 9, 2010, and terminated pursuant to the IP Omnibus Agreement as of the Amendment Date.

"**NAND Flash Memory Product**" means a non-volatile semiconductor memory device containing memory cells that are electrically programmable and electrically erasable whereby the memory cells consist of one or more transistors that have a floating gate, charge trapping regions

or any other functionally equivalent structure utilizing one or more different charge levels (including binary or multi-level cell structures), with or without any on-chip control, I/O and other support circuitry, in wafer, die or packaged form.

"**Nan Ya Plastics**" shall have the meaning set forth in Section 9.2(e) to this Agreement.

"**NTC**" shall have the meaning set forth in the preamble to this Agreement.

"**NTC Products**" means Stack DRAM Products and/or Stack DRAM Modules, the design for which (i) is owned by NTC either solely or jointly with Micron, or (ii) is licensed by Micron to NTC pursuant to this Agreement.

"**NTC Qualified Fab**" means NTC's semiconductor manufacturing facility located at No. 98 Nanlin Rd., Taishan District, New Taipei City, Taiwan, ROC (i.e., NTC's Fab 3A) but only for so long as (i) such facility is [***] and (ii) no other [***] has a [***] or [***], directly or indirectly, [***] any of the [***] in such facility. For purposes of this definition, a [***] shall not be considered the type of [***] described in subsection (ii) above.

"**Numonyx B.V.**" means Numonyx Holdings B.V., a private limited liability company organized under the laws of the Netherlands.

"**OEM**" shall have the meaning set forth in Section 4.1(b) to this Agreement.

"**Optimized Process Node**" means the optimization, simplification, or enhancement of a Primary Process Node designed to make operation of the Primary Process Node more efficient without changing the minimum, repeatable half pitch on a device (minimum physical feature size or line width) of the Primary Process Node.

"**Original Agreement**" shall have the meaning set forth in the Recitals to this Agreement.

"**Party**" and "**Parties**" shall have the meaning set forth in the preamble to this Agreement.

"**Patent Rights**" means all rights associated with any and all issued and unexpired patents and pending patent applications in any country in the world, together with any and all divisionals, continuations, continuations-in-part, reissues, reexaminations, extensions, foreign counterparts or equivalents of any of the foregoing, wherever and whenever existing.

"**Person**" means any natural person, corporation, joint stock company, limited liability company, association, partnership, firm, joint venture, organization, business, trust, estate or any other entity or organization of any kind or character.

"**Primary Process Node**" means a generation of Process Technology that results in substantial manufacturing efficiencies through either a reduction in the minimum repeatable half pitch of a device (minimum physical feature size or line width) relative to the prior generation of

such technology (*e.g.*, the 68nm Process Node or the 50nm Process Node, etc.) or a change in memory cell architecture (e.g. $4F^2$ and $6F^2$ cells).

"**Probe Testing**" means testing, using a wafer test program as set forth in the applicable specifications, of a wafer that has completed all processing steps deemed necessary to complete the creation of the desired Stack DRAM integrated circuits in the die on such wafer, the purpose of which test is to determine how many and which of the die meet the applicable criteria for such die set forth in the specifications.

"**Process Development Contractor**" means a Third Party engaged by NTC to develop process technology solely for use by NTC at the NTC Qualified Fab [***] such Third Party is not a [***] in a [***] Micron or any of Micron's Affiliates (except where such Third Party is a [***] Micron or any of Micron's Affiliates [***].

"**Process Node**" means a collection of process technology and equipment that enables the production of semiconductor wafers for a particular minimum repeatable half pitch of a device (minimum physical feature size or line width) and often designated by the size of such pitch (*e.g.*, the 68 nm Process Node or the 50 nm Process Node, etc.).

"**Process Qualification**" means, with respect to each Primary Process Node and Optimized Process Node, when (a) the Stack DRAM Products or Stack DRAM Modules designed to be on the node can be made fully compliant with any applicable Industry Standard(s) (if any) and the defects per million die quality level meets or exceeds the level necessary for high volume shipments for desktop and notebook personal computer applications or (b) or such other or additional parameters as may be defined in the Process SOW as "Process Qualification" for the Primary Process Node or the Optimized Process Node that is the subject of the SOW, such as any of those parameters for "Process Qualification" set forth in Schedule 8 of the JDP Agreement or the JDP-CSA Agreement for computer server or other applications specified in the applicable Process SOW prior to the Amendment Date.

"**Process SOW**" means any SOW in effect prior to the Amendment Date primarily directed to the development of Process Technology, including the development of a Primary Process Node or an Optimized Process Node to be used by a Joint Venture Company, Micron or NTC in the manufacture of Stack DRAM Products.

"**Process Technology**" means that process technology developed by one or both Parties before expiration of the Term and utilized in the manufacture of Stack DRAM wafers, including Probe Testing and technology developed through Product Engineering thereof**,** regardless of the form in which any of the foregoing is stored, but excluding any Patent Rights and any technology, trade secrets or know-how that relate to and are used in any back-end operations (after Probe Testing).

"**Product Engineering**" means any one or more of the engineering activities described on Schedule 7 to the JDP Agreement or the JDP-CSA Agreement as applied to Stack DRAM Products or Stack DRAM Modules.

"**RASL**" means that certain Second Amended and Restated Restricted Activities Side Letter agreement by and between the Parties effective as of April 9, 2010 and terminated pursuant to the IP Omnibus Agreement as of the Amendment Date.

"**Recoverable Taxes**" shall have the meaning set forth in Section 4.7(a).

"**Representative**" means with respect to a Party, any director, officer, employee, agent or Contractor of such Party or a professional advisor to such Party, such as an attorney, banker or financial advisor of such Party who is under an obligation of confidentiality to such Party by contract or ethical rules applicable to such Person.

"**Second Amended and Restated Technology Transfer and License Agreement**" has the meaning set for in the Recitals to this Agreement.

"**Shares**" means the ordinary shares of IMI, each having a par value of NT$10.

"**Software**" means computer program instruction code, whether in human-readable source code form, machine-executable binary form, firmware, scripts, interpretive text, or otherwise. The term "Software" does not include databases and other information stored in electronic form, other than executable instruction codes or source code that is intended to be compiled into executable instruction codes.

"**SOW**" means a statement of the work that describes research and development work to be performed under the JDP Agreement or the JDP-CSA Agreement prior to the Amendment Date and that has been adopted by the relevant JDP Committee pursuant to the procedures set forth therein.

"**Stack DRAM**" means dynamic random access memory cells that function by using a capacitor arrayed predominantly above the semiconductor substrate.

"**Stack DRAM Design**" means, with respect to a Stack DRAM Product, the corresponding design components, materials and information listed on Schedule 3 of the JDP Agreement or the JDP-CSA Agreement or as otherwise determined by the relevant JDP Committee in a SOW.

"**Stack DRAM Module**" means one or more Stack DRAM Products in a package or module (whether as part of a SIMM, DIMM, multi-chip package, memory card or other memory module or package).

"**Stack DRAM Product**" means any memory device comprising Stack DRAM, whether in die or wafer form, manufactured by using a JDP Process Node.

"**Subsidiary**" means, with respect to any specified Person, any other Person that, directly or indirectly, including through one or more intermediaries, is controlled by such specified Person.

"**Tax**" or "**Taxes**" means any federal, state, local or foreign net income, gross income, gross receipts, sales, use ad valorem, transfer, franchise, profits, service, service use, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, customs, duties or other type of fiscal levy and all other taxes, governmental fees, registration fees, assessments or charges of any kind whatsoever, together with any interest and penalties, additions to tax or additional amounts imposed or assessed with respect thereto.

"**Taxing Authority**" means any Governmental Entity exercising any authority to impose, regulate or administer the imposition of Taxes.

"**Term**" shall have the meaning set forth in Section 9.1.

"**Third Party**" means any Person other than NTC or Micron.

"**TTLA 20**" means that certain Technology Transfer and License Option Agreement for 20nm Process Nodes dated as of the date hereof, between the Parties, as may be amended from time to time.

"**TTLA 68-50**" means that certain Second Amended and Restated Technology Transfer and License Agreement for 68-50nm Process Nodes dated as of the date hereof, between the Parties, as may be amended from time to time.

"**[***]**" means [***] pursuant to which [***] is required to [***] any of the [***] under the [***].

1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (1) all references to Sections, Articles, Exhibits, Appendices or Schedules are to Sections, Articles, Exhibits, Appendices or Schedules of or to this Agreement, (2) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with GAAP, (3) words in the singular include the plural and vice versa, (4) the term "**including**" means "including without limitation," and (5) the terms "**herein**," "**hereof**," "**hereunder**" and words of similar import shall mean references to this Agreement as a whole and not to any individual section or portion hereof. Unless otherwise denoted, all references to $ or dollar amounts will be to lawful currency of the United States of America. All references to "**day**" or "**days**" will mean calendar days.

(b) No provision of this Agreement will be interpreted in favor of, or against, either Party by reason of the extent to which (1) such Party or its counsel participated in the drafting thereof or (2) any such provision is inconsistent with any prior draft of this Agreement or such provision.

## ARTICLE 2

## LICENSES

2.1 Micron Grant to NTC. Subject to the terms and conditions of this Agreement, Micron grants to NTC [***] royalty-bearing (subject to Section 4.1) license to [***] of the [***] transferred by Micron to NTC or to IMI, in each case, [***]:

(a) to [***] and [***] solely in [***] using [***];

(b) to [***] (to the extent permissible under [***] by a [***] to be [***] using the [***];

(c) to [***] in wafer form using [***] and [***] such wafers [***] solely during [***] and solely [***] to a supply agreement entered into by and between NTC and IMI and approved in writing by Micron; and

(d) to [***] and/or [***] in accordance with the foregoing.

2.2 NTC Grant to Micron. Subject to the terms and conditions of this Agreement, NTC grants to Micron a [***] royalty-free license to [***] the [***] transferred by NTC to Micron or to IMI:

(a) to [***] and [***];

(b) to [***] (to the extent permissible under [***] by a [***] to be [***] or any of its Affiliates;

(c) to [***] in wafer form and [***] such wafers [***] or any of its Affiliates; and

(d) to [***] and/or [***] in accordance with the foregoing.

2.3 Reservations of Rights.

(a) Except as expressly set forth in Section 2.1, Micron reserves all of its rights, title and interest in, to and under the Background IP and Foundational Know-How of Micron. No

right or license is granted under this Agreement by Micron to NTC expressly, impliedly, by estoppel or otherwise, in, to or under any Patent Rights, or, except as expressly set forth in Section 2.1, any IP Rights, material, technology or other intellectual property owned by or licensed to Micron or any of its Affiliates, and NTC shall not exploit any IP Rights of Micron beyond the scope of the rights expressly licensed under Section 2.1.

(b) Except as expressly set forth in Section 2.2, NTC reserves all of its rights, title and interest in, to and under the Foundational Know-How of NTC. No right or license is granted under this Agreement by NTC to Micron expressly, impliedly, by estoppel or otherwise, in, to or under any Patent Rights, or, except as expressly set forth in Section 2.2, any IP Rights, material, technology or other intellectual property owned by or licensed to NTC or any of its Affiliates, and Micron shall not exploit any IP Rights of NTC beyond the scope of the rights expressly licensed under Section 2.2.

## ARTICLE 3

## RESERVED

3.1 Intentionally Blank

## ARTICLE 4

## PAYMENTS

4.1 Royalties for Products Manufactured on JDP Process Nodes.

(a) NTC shall pay to Micron royalties of [***] of Adjusted Revenues or Foundry Customer Adjusted Revenues, as applicable, for all Stack DRAM Products or Stack DRAM Modules where the Stack DRAM Product was originally made on a JDP Process Node, provided that, NTC shall pay to Micron royalties of [***] of Foundry Customer Adjusted Revenues for all Foundry Customer Products manufactured on a JDP Process Node that have a [***] of [***] the [***] for the relevant [***] wherein a [***] is the [***] with respect to a [***] so that [***] (all royalties referred to under this section shall be referred to as "**JDP IP Royalties**")**.**

(b) If a Stack DRAM Product or a Stack DRAM Module originally manufactured by the NTC Qualified Fab is sold or otherwise transferred to an Affiliate of NTC that is either an end user or an original equipment manufacturer ("**OEM**") or a Stack DRAM Product or a Stack DRAM Module originally manufactured by IMI is sold or otherwise transferred to NTC or an Affiliate of NTC wherein NTC or the Affiliate acts as an end user or an OEM, then Gross Revenues under this Agreement and the TTLA 68-50 will also include such sales or other transfer to NTC or the Affiliate and the Gross Revenues used in the calculation of royalties under Section 4.1(a) shall be the greater of (i) the [***] of the [***] the same [***] as sold [***] in the [***] to [***] that are not [***] and (ii) the [***] associated with the [***] to the [***], as applicable.

(c) JDP IP Royalties payable under this Section 4.1 are due for all sales or transfers of Stack DRAM Products or Stack DRAM Modules occurring before [***].

4.2 Royalties On Products Made By A Joint Venture Company. Notwithstanding anything to the contrary in the TTLA 68-50 or this Agreement, royalties are owed with respect to any [***] from the sale or other transfer of the Stack DRAM Product (in the form of a Stack DRAM Product) [***] Stack DRAM Product resulted from [***], or with respect to a Stack DRAM Module containing [***] resulting from [***]. (For example, [***] includes the number of Stack DRAM Products contained in the Stack DRAM Module manufactured [***].)

4.3 Royalty Reporting and Payment. Within sixty (60) days following the end of [***] for so long as any JDP IP Royalties are payable hereunder, NTC shall submit to Micron a written report, which is certified by NTC's chief financial officer as complete and correct, setting forth in reasonable detail, the quantity of each Stack DRAM Product disposed of by NTC and its Affiliates and the applicable JDP IP Royalties due for the immediately preceding [***]. NTC shall pay to Micron all JDP IP Royalties due for such [***] contemporaneously with the submission of such report in accordance with Section 4.5. NTC shall cause each of its Affiliates (other than NTC Subsidiaries) who dispose of Stack DRAM Product in a manner that causes JDP IP Royalties to be due to provide a written report, which is certified by each such Affiliate's chief financial officer as complete and correct, setting forth in reasonable detail such Affiliate's dispositions of Stack DRAM Product and corresponding JDP IP Royalties for the [***] that is the subject of each of the foregoing reports of NTC. NTC shall provide a copy of each report from an Affiliate (other than NTC Subsidiaries) to Micron with submission of NTC's report.

4.4 Audit Rights and Records. Micron shall have the right to have an independent Third Party auditor audit [***], upon reasonable advance written notice, during normal business hours and on a confidential basis subject to the Mutual Confidentiality Agreement, all records and accounts of NTC relevant to the calculation of JDP IP Royalties in the [***] immediately preceding the date of the audit; *provided however*, NTC shall not be obligated to provide any records and book of accounts existing prior to the Effective Date. NTC shall, and shall cause its Affiliates to, for at least a period of [***] from the date of their creation, keep complete and accurate records and books of accounts concerning all transactions relevant to calculation of JDP IP Royalties in sufficient detail to enable a complete and detailed audit to be conducted. NTC shall cause any Affiliate that disposes of Stack DRAM Product in a manner that causes JDP IP Royalties to be due to keep records and permit an audit of such records consistent with the obligations of NTC hereunder. In the event any such audit determines that JDP IP Royalties have been underpaid by more than [***] in any [***], NTC or its Affiliate shall promptly pay Micron such underpayment amount, together with interest, and reimburse Micron for its reasonable costs and expenses of the audit.

4.5 Reports and Invoices; Payments.

(a) All reports and invoices under this Agreement may be sent by any method described in Section 10.1 or electronically with hardcopy confirmation sent promptly thereafter by

any method described in Section 10.1. Such reports and invoices should be sent to the following contacts or such other contact as may be specified hereafter pursuant to a notice sent in accordance with Section 10.1:

(i) Invoices to NTC:

[***]
Corporate Planning Division
Nanya Technology Corp.
Hwa-Ya Technology Park 669, Fuhsing 3 Rd. Kueishan, Taoyuan, Taiwan, R. O. C.
Fax: [***]
E-Mail: [***]

(ii) Reports to Micron:

[***]
8000 S. Federal Way
P.O. Box 6, MS 1-720
Boise, Idaho, USA 83707-0006
Fax: [***]
Email: [***]

(b) All amounts owed by a Party under this Agreement are stated, calculated and shall be paid in United States Dollars ($ U.S.).

(c) Payment is due on all amounts properly invoiced within thirty (30) days of receipt of invoice. All payments made under this Agreement shall be made by wire transfer to a Micron bank account designated by the following person or by such other person designated by notice:

Payments to Micron:

[***]
8000 S. Federal Way
P.O. Box 6, MS 1-107
Boise, Idaho, USA 83707-0006
Fax: [***]
Email: [***]

4.6 Interest. Any amounts payable to Micron hereunder and not paid within the time period provided shall accrue interest, from the time such payment was due until the time payment is actually received, at the rate of [***], compounded annually or the highest rate permitted by Applicable Law, whichever is lower.

4.7 Taxes.

(a) All sales, use and other transfer Taxes imposed directly on or solely as a result of the services, rights licensed or technology transfers or the payments therefor provided herein shall be stated separately on the service provider's, licensor's or technology transferor's invoice, collected from the service recipient, licensee or technology transferee and shall be remitted by service provider, licensor or technology transferor to the appropriate Taxing Authority ("**Recoverable Taxes**"), unless the service recipient, licensee or technology transferee provides valid proof of tax exemption prior to the Effective Date or otherwise as permitted by Applicable Law prior to the time the service provider, licensor or technology transferor is required to pay such Taxes to the appropriate Taxing Authority. When property is delivered, rights granted and/or services are provided or the benefit of services occurs within jurisdictions in which collection and remittance of Taxes by the service recipient, licensee or technology transferee is required by law, the service recipient, licensee or technology transferee shall have sole responsibility for payment of said Taxes to the appropriate Taxing Authority. In the event any Taxes are Recoverable Taxes and the service provider, licensor or technology transferor does not collect such Taxes from the service recipient, licensee or technology transferee or pay such Taxes to the appropriate Governmental Entity on a timely basis, and is subsequently audited by any Taxing Authority, liability of the service recipient, licensee or technology transferee will be limited to the Tax assessment for such Recoverable Taxes, with no reimbursement for penalty or interest charges or other amounts incurred in connection therewith. Except as provided in Section 4.7(b), Taxes other than Recoverable Taxes shall not be reimbursed by the service recipient, licensee or technology transferee, and each Party is responsible for its own respective income Taxes (including franchise and other Taxes based on net income or a variation thereof), Taxes based upon gross revenues or receipts, and Taxes with respect to general overhead, including but not limited to business and occupation Taxes, and such Taxes shall not be Recoverable Taxes.

(b) In the event that the service recipient, licensee or technology transferee is prohibited by Applicable Law from making payments to the service provider, licensor or technology transferor unless the service recipient, licensee or technology transferee deducts or withholds Taxes therefrom and remits such Taxes to the local Taxing Authority, then the service recipient, licensee or technology transferee shall [***] and shall pay to the service provider, licensor or technology transferor the [***] and, in the case of [***], after the [***] of any [***] as a result of the payment to the service provider, licensor or technology transferor of [***] the service provider, licensor or technology transferor [***] of any such [***] of any such [***].

4.8 Payment Delay. Notwithstanding anything to the contrary in this Agreement, if requested by Micron by notice in accordance with Section 10.1, NTC will delay making any payments hereunder when due until notified by Micron in accordance with Section 10.1.

## ARTICLE 5

## OTHER INTELLECTUAL PROPERTY MATTERS

5.1 Intellectual Properties Retained. Nothing in this Agreement shall be construed to transfer ownership of any intellectual property rights from one Party to another Party.

5.2 Cooperation In Claims Of Patent Infringement. To the extent permissible in accordance with Applicable Law, (i) Micron shall cooperate with and provide commercially reasonable assistance to NTC if any Third Party asserts a patent infringement or other intellectual property infringement claim related to NTC's use of the Background IP or Foundational Know-How of Micron transferred and used within the scope of the license granted hereunder, and (ii) NTC shall cooperate with and provide commercially reasonable assistance to Micron if any Third Party asserts a patent infringement or other intellectual property infringement claim related to Micron's use of the Foundational Know-How of NTC transferred and used within the scope of the license granted hereunder. Such cooperation and assistance could include engaging in discussions involving claim interpretation or prior art but shall not require the cooperating Party to [***] the other Party [***] of or resulting from any such [***] as a [***] any of the [***].

5.3 [***] Relating to NTC Foundry Customers. In the event that (i) NTC begins using a JDP Process Node to design, develop, manufacture, and/or test [***] Products for a Third Party [***] such Third Party [***] as set forth in [***] above, and (ii) such Third Party [***] a [***] in a [***] or any of [***] except where such Third Party [***] in a [***], the Parties agree that:

(a) NTC shall not have any right under this Agreement to [***] for such Third Party for so long as such Third Party [***]; and

(b) Micron shall not [***] based solely on [***] using the [***] for such Third Party [***] such Third Party [***] until [***] such Third Party [***].

5.4 [***] Relating to Micron Foundry Products. In the event that (i) Micron begins using NTC Foundational Know How to design, develop, manufacture, and/or test Micron Foundry Products for a Third Party [***] such Third Party [***] a [***] in a [***] or any of [***], and (ii) such Third Party [***] a [***] in a [***] or any of [***] except where such Third Party [***] in a [***], the Parties agree that:

(a) Micron shall not have any right under this Agreement to [***] for such Third Party for so long as such Third Party [***] in a [***] or any of [***] except where such Third Party [***] in a [***]; and

(b) NTC shall not [***] based solely on [***] using [***] for such Third Party [***] such Third Party [***] in a [***] or any of [***] except where such Third Party [***] in a [***] until [***] such Third Party [***].

## ARTICLE 6

## WARRANTIES; DISCLAIMERS

6.1 No Implied Obligation or Rights. Nothing contained in this Agreement shall be construed as:

(a) a warranty or representation that any manufacture, sale, lease, use or other disposition of any products based upon any of the IP Rights licensed or technology transferred hereunder will be free from infringement, misappropriation or other violation of any Patent Rights, IP Rights or other intellectual property rights of any Person;

(b) an agreement to bring or prosecute proceedings against Third Parties for infringement, misappropriation or other violation of rights or conferring any right to bring or prosecute proceedings against Third Parties for infringement, misappropriation or other violation of rights; or

(c) conferring any right to use in advertising, publicity, or otherwise, any trademark, trade name or names, or any contraction, abbreviation or simulation thereof, of either Party.

6.2 Third Party Software. Exploitation of any of the rights licensed or technology transferred hereunder may require use of Software owned by a Third Party and not subject to any license granted under any other agreements between Micron and NTC. Nothing in this Agreement shall be construed as granting to any Party, any right, title or interest in, to or under any Software owned by any Third Party. Except as may be specified otherwise in any of the other Joint Venture Documents, any such Software so required is solely the responsibility of each of the Parties. Moreover, should a Party who transfers technology under this Agreement discover after such transfer that it has provided Software to the other Party that it was not entitled to provide, such providing Party shall promptly notify the other Party and the recipient shall return such Software to the providing Party and not retain any copy thereof.

6.3 Disclaimer. EXCEPT AS PROVIDED IN SECTION 6.4, EACH OF NTC AND MICRON DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR AGAINST INFRINGEMENT WITH RESPECT TO ANY TECHNOLOGY, IP RIGHTS, MICRON BACKGROUND IP, OR OTHER RIGHTS OR MATERIALS LICENSED OR TRANSFERRED UNDER THIS AGREEMENT. NEITHER NTC NOR MICRON MAKES ANY WARRANTIES WITH RESPECT TO THE OTHER PARTY'S ABILITY TO: (A) USE ANY OF THE FOREGOING, OR (B) MANUFACTURE OR HAVE MANUFACTURED ANY PRODUCTS BASED THEREON. NEITHER NTC NOR MICRON MAKES ANY WARRANTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, THAT THE USE, PRACTICE OR COMMERCIAL

EXPLOITATION OF ANYTHING PROVIDED PURSUANT TO THIS AGREEMENT WILL NOT INFRINGE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

6.4 Background IP. Micron represents and warrants to NTC that the Transferred Technology transferred to NTC pursuant to Section 3.1 of the TTLA 68-50 includes the state thereof used by Micron as of the Effective Date in the production of Stack DRAM Products on its or its Affiliates' 68nm Process Node.

## ARTICLE 7

## LIMITATION OF LIABILITY

7.1 LIMITATION OF LIABILITY. OTHER THAN IN CONNECTION WITH A BREACH OF ARTICLE 8, IN NO EVENT SHALL ONE PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER INDIRECT DAMAGES OR ANY PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHER THEORY OF LIABILITY. THESE LIMITATIONS SHALL APPLY EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS ON POTENTIAL LIABILITIES SET FORTH HEREIN ARE AN ESSENTIAL ELEMENT IN THE CONSIDERATION PROVIDED BY EACH PARTY UNDER THIS AGREEMENT.

## ARTICLE 8

## CONFIDENTIALITY

8.1 Confidentiality Obligations. Subject to the rights expressly granted to the Parties hereunder and any applicable restrictions under this Agreement or the other Joint Venture Documents, all information provided, disclosed or obtained on or after the Effective Date and prior to the Amendment Date in connection with this Agreement, the TTLA 68-50 or the performance of any of the Parties' activities on or after the Effective Date and prior to the Amendment Date under this Agreement or the TTLA 68-50 shall be deemed “Confidential Information” subject to all applicable provisions of the Mutual Confidentiality Agreement. The terms and conditions of this Agreement and the TTLA 68-50 shall be considered “Confidential Information” under the Micron-NTC Mutual NDA for which Micron and NTC shall be considered a “Receiving Party” under such agreement. The Parties acknowledge that Process Technology, JDP Process Nodes, JDP Inventions, JDP Work Product and other information exchanged pursuant to the JDP Agreement or the JDP-CSA Agreement are subject to restrictions on disclosure set forth therein. Information disclosed between the Parties on or after the Amendment Date shall be governed by the Micron-NTC Mutual NDA. If the Micron-NTC Mutual NDA is terminated or expires and is not replaced, then Confidential

Information provided, disclosed, obtained or accessed in the performance of the Parties' activities under this Agreement on or after the Amendment Date shall continue to be subject to all applicable provisions of the Micron-NTC Mutual NDA notwithstanding such termination or expiration.

8.2 Additional Controls For Certain Information. To the extent any layout and schematics data/databases, scribe line test patterns, internal architecture specifications, test modes and configurations, or similarly sensitive information is provided to a Party under this Agreement, such subject matter shall be stored solely on secure servers and password protected, and such Party shall limit access to such data exclusively to those of its Representatives who have a need to access such data for the purposes of exercising its rights hereunder**.**

8.3 Micron Background IP and Foundational Know-How.

(a) NTC may disclose Background IP or Foundational Know-How of Micron to the NTC Qualified Fab under a written obligation of confidentiality that is no less restrictive than that applicable to the Parties under the Mutual Confidentiality Agreement.

(b) NTC shall not and shall cause the NTC Qualified Fab not to remove any product identification, copyright or other proprietary notices from any of the Background IP or Foundational Know-How of Micron.

(c) NTC may disclose to its Foundry Customers so much of the Background IP and such Foundational Know-How of Micron that corresponds to the 68nm Process Node, or the 50nm Process Node and that constitutes [***]; *provided, however*, [***] (as defined in the Mutual Confidentiality Agreement) may be disclosed to any Foundry Customer that is [***]. Each such disclosure shall be made subject to a written obligation of confidentiality on behalf of the Foundry Customer that is no less restrictive than that applicable to NTC under the Mutual Confidential Agreement.

(d) Should NTC desire to engage the services of a Third Party to assist NTC in the creation of a Stack DRAM Design, or portion thereof, for manufacture under the licenses granted in this Agreement or in the TTLA 68-50, then NTC may disclose to such Third Party so much of the Background IP and Foundational Know-How of Micron as is necessary to such assistance only upon Micron's prior written consent and subject to the terms and conditions of such consent; provided that NTC may disclose to such Third Party so much of the [***] that constitutes [***], without Micron's consent but subject to, in each case, the following requirements: NTC's right to make the foregoing disclosure to such Third Party shall only continue for so long as (i) such Third Party is not a [***] in a [***] Micron or any of its Affiliates and is not [***] or any of its Affiliates [***] (except where such Third Party is a [***] in a [***] Micron or any of Micron's Affiliates [***]), (ii) such Third Party is not [***], and (iii) such Third Party is subject to a written obligation of confidentiality that is no less restrictive than that applicable to NTC under the Mutual Confidential Agreement. For the purpose of this Section 8.3(d), no [***] (as defined in the Mutual Confidentiality Agreement) may be disclosed to any such Third Party that is [***].

(e) NTC may disclose to a Process Development Contractor the Background IP and Foundational Know-How of Micron to the limited extent strictly necessary for such Third Party to perform the process development tasks for NTC under the development agreement between the Process Development Contractor and NTC; *provided however*, that NTC shall not disclose the Transferred Technology (or any portion thereof) to any Process Development Contractor that is [***]. Such development agreement between the Process Development Contractor and NTC shall contain obligations of confidentiality on behalf of the Third Party that are no less restrictive than those applicable to NTC under the Mutual Confidentiality Agreement; *provided, however*, [***] (as defined in the Mutual Confidentiality Agreement) may be disclosed to any such Third Party that is [***].

(f) For the avoidance of doubt, as used in Sections 8.3(c), (d) and (e), the phrase [***] does not include [***] if such entity does not [***].

8.4 NTC Foundational Know-How.

(a) Micron may disclose Foundational Know-How of NTC to Micron Qualified Fabs under a written obligation of confidentiality that is no less restrictive than that applicable to the Parties under the Mutual Confidentiality Agreement.

(b) Micron shall not and shall cause Micron Qualified Fabs not to remove any product identification, copyright or other proprietary notices from any of the Foundational Know-How of NTC.

(c) Micron may disclose to its Micron Foundry Product customers so much of the Foundational Know-How of NTC that constitutes [***]. Each such disclosure shall be made subject to a written obligation of confidentiality on behalf of the Micron Foundry Products customer that is no less restrictive than that applicable to the Parties under the Mutual Confidential Agreement.

(d) Should Micron desire to engage the services of a Third Party to assist Micron in the creation of a Micron Product, a Stack DRAM Design, a Process Node, or portion thereof, then Micron may disclose to such Third Party so much of the Foundational Know How of NTC as is reasonably necessary to such assistance. Such disclosures shall be subject to a written agreement that contains obligations of confidentiality on behalf of the Third Party that are no less restrictive than those applicable to the Parties under the Mutual Confidentiality Agreement.

8.5 Conflicts. To the extent there is a conflict between this Agreement and the Mutual Confidentiality Agreement or the Micron-NTC Mutual NDA, the terms of this Agreement shall control. To the extent there is a conflict between this Agreement and the JDP Agreement, the JDP Agreement shall control. To the extent there is a conflict between this Agreement and the JDP-CSA Agreement, the JDP-CSA Agreement shall control.

## ARTICLE 9

## TERM AND TERMINATION

9.1 Term. The term of this Agreement commences on the Effective Date and continues in effect until terminated by mutual agreement; *provided, however*, that the amendments made to the Second Amended and Restated Technology Transfer and License Agreement by this Agreement commence retroactively on the Amendment Date as if this Agreement had been executed and delivered on the Amendment Date. (The period from the Effective Date until termination is the "**Term**").

9.2 Termination of License and/or Agreement.

(a) In the event that NTC commits a material breach of this Agreement and such breach remains uncured for more than sixty (60) days after notice of the breach, Micron may terminate the licenses granted to NTC under this Agreement by written notice to NTC**.** In the event that Micron terminates the TTLA 68-50 or the TTLA 20 for material breach, Micron may terminate this Agreement by written notice to NTC. An inadvertent disclosure by one Party or a Party's Representative of the other Party's Confidential Information in violation of this Agreement, the Mutual Confidentiality Agreement or the Micron-NTC Mutual NDA, as applicable, shall not be considered a material breach of this Agreement provided that (i) such Party takes prompt action to retract the disclosure and prevent further similar violations, and (ii) the disclosure was not in intentional or willful disregard of the non-disclosure obligations set forth in this Agreement, in the Mutual Confidentiality Agreement or in the Micron-NTC Mutual NDA.

(b) If an [***] occurs, Micron may terminate the license granted to NTC under Section 2.1(c) immediately upon notice provided that the conditions for termination set forth in Section 11.5(b) of the Joint Venture Agreement relating to IMI have been met.

(c) Micron may terminate the licenses granted to NTC under this Agreement upon written notice to NTC in the event that one or more of the following events occur: (i) appointment of a trustee or receiver for all or any part of the assets of NTC; (ii) insolvency or bankruptcy of NTC; (iii) a general assignment by NTC for the benefit of creditor(s); or (iv) dissolution or liquidation of NTC.

(d) Micron may terminate the licenses granted to NTC under this Agreement upon written notice to NTC in the event that (i) NTC undergoes a Change of Control, or (ii) the NTC Qualified Fab is otherwise acquired, whether de factor or de jure, by any Third Party. NTC shall provide written notice to Micron prior to such Change of Control or such acquisition by a Third Party of the NTC Qualified Fab.

(e) Micron may terminate the licenses granted to NTC under this Agreement upon written notice to NTC in the event of a breach or default by Nan Ya Plastics Corporation, a

company incorporated under the laws of the ROC ("**Nan Ya Plastics**") of any of its obligations set forth in Sections 1, 2 or 3 of that certain New Finance Agreement dated as of the date hereof by and among Micron, MNL, Numonyx B.V., MSA, MTT, IMI and Nan Ya Plastics.

9.3 Effects of Termination.

(a) Termination of this Agreement or NTC's license hereunder shall not affect any of the Parties' respective rights accrued or obligations owed before termination. In addition, the following shall survive termination for any reason: Articles 1, 6, 7 and 10 and Sections 2.3, 4.3 through 4.7, 5.1, 8.1, 8.2, 8.3(b), 8.4(b), 8.5 and 9.3.

(b) Upon termination of NTC's license under this Agreement pursuant to Section 9.2(a), (c), (d) or (e), NTC shall:

(i) cease all exploitation of the rights terminated, except that NTC may continue to manufacture any work in process at the time of termination, and, for up to [***] after termination, sell any Stack DRAM Products or Stack DRAM Modules that were finished goods at the time of termination or become finished goods made from work in process at the time of termination subject to payment of any applicable JDP IP Royalties thereon consistent with Sections 4.1 through 4.6;

(ii) on or before the end of such [***] period, destroy all copies of the Background IP or Foundational Know-How licensed to NTC, as applicable, in whatever form received, reproduced or stored, including redacting any such material from any derivatives thereof; and

(iii) certify to NTC that such exploitation and destruction is complete.

(c) Upon termination of NTC's license under this Agreement pursuant to Section 9.2(b), NTC shall:

(i) immediately cease all exploitation of the Background IP and Foundational Know-How of Micron;

(ii) within [***] of such notice, destroy all copies of the Background IP or Foundational Know-How of Micron, in whatever form received, reproduced or stored, including redacting any such material from any derivatives thereof; and

(iii)certify to the Micron that such exploitation and destruction is complete.

## ARTICLE 10

## MISCELLANEOUS

10.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given upon (a) transmitter's confirmation of a receipt of a facsimile transmission, (b) confirmed delivery by a standard overnight carrier or when delivered by hand, or (c) delivery in person, addressed at the following addresses (or at such other address for a party as shall be specified by like notice):

If to NTC: Nanya Technology Corporation
Hwa-Ya Technology Park 669
Fuhsing 3 RD. Kueishan
Taoyuan, Taiwan, ROC
Attention: Legal Department
Fax: 886.3.396.2226

If to Micron: Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attention: General Counsel
Fax: 208.368.1309

10.2 Waiver. The failure at any time of a Party to require performance by the other Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by the other Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

10.3 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto*; provided, however*, that neither this Agreement nor any right or obligation hereunder may be assigned or delegated by either Party in whole or in part to any other Person, including, without limitation, by merger, operation of law, or through the transfer of all or substantially all of the equity, assets, or business of a Party to this Agreement, without the prior written consent of the non-assigning Party. Any purported assignment in violation of the provisions of this Section 10.3 shall be null and void and have no effect.

10.4 Third Party Rights. Nothing in this Agreement, whether express or implied, is intended or shall be construed to confer, directly or indirectly, upon or give to any Person, other than the Parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

10.5 Force Majeure. The Parties shall be excused from any failure to perform any obligation hereunder to the extent such failure is caused by a Force Majeure Event.

10.6 Choice of Law. This Agreement shall be construed and enforced in accordance with and governed by the laws of the State of Delaware, USA, without giving effect to the principles of conflict of laws thereof.

10.7 Jurisdiction; Venue. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be brought in a state or federal court of competent jurisdiction located in the State of California, USA, and each of the Parties to this Agreement hereby consents and submits to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

10.8 Headings. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

10.9 Export Control. Each Party agrees that it will not knowingly: (a) export or re-export, directly or indirectly, any technical data (as defined by the U.S. Export Administration Regulations) provided by the other Party or (b) disclose such technical data for use in, or export or re-export directly or indirectly, any direct product of such technical data, including Software, to any destination to which such export or re-export is restricted or prohibited by United States or non-United States law, without obtaining prior authorization from the U.S. Department of Commerce and other competent Government Entities to the extent required by Applicable Laws.

10.10 Entire Agreement. This Agreement, together with its Schedules and the agreements and instruments expressly provided for herein, including the applicable terms of the other Joint Venture Documents, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements, amendments and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof, provided that, in the event that any right, obligation or other provision of this Agreement conflicts with any right, obligation or provision of that certain Waiver and Consent Side Letter Agreement, entered into by and between the Parties and effective October 11, 2012, as amended, the Waiver and Consent Side Letter Agreement shall prevail, and the Parties shall conduct their affairs to give effect to such rights, obligations or provisions as are set forth in the Waiver and Consent Side Letter Agreement.

10.11 Severability. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force in all other respects. Should any provision of this Agreement be or become ineffective because of changes

in Applicable Laws or interpretations thereof, or should this Agreement fail to include a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

10.12 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Signature pages follow.]*

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first above written.

**MICRON TECHNOLOGY, INC.**

By: /s/ Michael W. Sadler
Name: Michael W. Sadler
Title: Vice President of Corporate Development

**NANYA TECHNOLOGY CORPORATION**

By: /s/ Charles Kau
Name: Charles Kau
Title: President

**[***] DENOTES CONFIDENTIAL MATERIALS OMITTED AND FILED SEPARATELY WITH THE SECURITIES AND EXCHANGE COMMISSION PURSUANT TO A REQUEST FOR CONFIDENTIAL TREATMENT**



# OMNIBUS IP AGREEMENT

This **OMNIBUS IP AGREEMENT** ("**Agreement**") is made and entered into on this 17th day of January, 2013, by and between Micron Technology, Inc., a Delaware corporation with a principal place of business at 8000 South Federal Way, Boise, Idaho 83707 U.S.A. ("**Micron**"), and Inotera Memories, Inc. (Inotera Memories, Inc. [Translation from Chinese]), a company incorporated under the laws of the Republic of China ("**ROC**"), having offices at 667 Fu Hsing 3rd Road, Hwa Ya Technology Park, Kueishan, Taoyuan 333, Taiwan ("**Inotera**"). Each of Micron and Inotera may be referred to herein individually as a "**Party**" and collectively as the "**Parties**."

## RECITALS

**WHEREAS**, prior to the date of this Agreement, Micron, MNL, NTC and Inotera (the "**Prior JV Parties**") entered into certain agreements with each other relating to the ownership, governance and operation of Inotera and regarding certain business relationships among the Prior JV Parties (such agreements as amended prior to the date of this Agreement, the "**Prior JV Documents**");

**WHEREAS**, upon the Closing (as defined hereinafter), certain of the Prior JV Documents will be terminated, including all the provisions therein that purport to survive termination, and certain other of the Prior JV Documents will be terminated with certain provisions therein to survive in the same or amended form;

**WHEREAS**, Micron, MNL and Inotera are willing to permit such modifications and termina*t*ions in connection with the transactions contemplated by the Master Agreement (as defined hereinafter);

**NOW, THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto intending to be legally bound do hereby agree as follows:

## ARTICLE I

## DEFINITIONS; CERTAIN INTERPRETIVE MATTERS

1.1 **Definitions**.

In addition to the terms defined elsewhere in this Agreement, capitalized terms used in this Agreement shall have the respective meanings set forth below:

"**Affiliate**" means, with respect to any specified Person, any other Person that directly or indirectly, including through one or more intermediaries, controls, or is controlled by, or is under common control with such specified Person; and the term "**affiliated**" has a meaning correlative to the foregoing.

"**Agreement**" shall have the meaning set forth in the preamble to this Agreement.

"**Applicable Law**" means any applicable laws, statutes, rules, regulations, ordinances, orders, codes, arbitration awards, judgments, decrees or other legal requirements of any Governmental Entity.

"**Closing**" means the time contemplated by Section 5.1 of the Master Agreement, upon which the various deliveries and actions that are contemplated by the Master Agreement to take place at the "Closing" shall have occurred.

"**Confidential Information**" means that information deemed to be "Confidential Information" under the MCA if disclosed on or after April 21, 2008 and prior to the Effective Date, or information that meets the definition of Confidential Information as set forth in the Micron-Inotera NDA if provided, disclosed, obtained or accessed on or after the Effective Date.

"**Effective Date**" means January 1, 2013.

"**GAAP**" means, with respect to Micron, United States generally accepted accounting principles, and with respect to Inotera, ROC generally accepted accounting principles, in each case, as consistently applied by the Party for all periods at issue.

"**Governmental Entity**" means any governmental authority or entity of any country in the world, including any agency, board, bureau, commission, court, municipality, department, subdivision or instrumentality thereof.

"**Inotera**" has the meaning set forth in the Preamble to this Agreement.

"**IP Rights**" means copyrights, rights in trade secrets, Mask Work Rights and pending applications or registrations of any of the foregoing anywhere in the world. The term "IP Rights" does not include any rights to Patent(s) or rights in trademarks.

"**JDP Agreement**" means that certain Amended and Restated Joint Development Program Agreement by and between Micron and NTC effective as of November 26, 2008.

"**JDP-CSA Agreement**" means that certain Joint Development Program and Cost Sharing Agreement by and between Micron and NTC effective as of April 9, 2010.

"**JDP Inventions**" means all discoveries, improvements, inventions, developments, processes or other technology, whether patentable or not, that is/are conceived by one or more Representatives of one or more of the Parties in the course of activities conducted under the JDP Agreement or the JDP-CSA Agreement prior to the Effective Date.

"**JDP Process Node**" means any Process Node resulting from the research and development activities of the Parties pursuant to the JDP Agreement or the JDP-CSA Agreement.

"**JDP Work Product**" means the tangible work product created prior to the Effective Date under either the JDP Agreement or the JDP-CSA Agreement in the performance of any SOW, including all documentation, records, Software, methodology, drawings, masks, databases and other tangible materials created in performing any SOW, regardless of the form in which such work product is originally created or thereafter reproduced, translated, converted or stored.

"**Joint Venture Agreement**" means that certain Joint Venture Agreement dated the date hereof, by and among MNL, Numonyx B.V., MTAP and NTC.

"**Joint Venture Documents**" has the meaning set forth in the Joint Venture Agreement.

"**Master Agreement**" means that certain Master Agreement, dated as of the date hereof, among Micron, MNL, Numonyx B.V., MTAP, MSA, NTC, and Inotera.

"**Mask Work Rights**" means rights under the United States Semiconductor Chip Protection Act of 1984, as amended from time to time, or under any similar equivalent laws in countries other than the United States.

"**MCA**" means that certain Second Amended and Restated Mutual Confidentiality Agreement dated as of November 26, 2008, among NTC, NTC's Subsidiaries (as defined therein), Micron, Micron's Subsidiaries (as defined therein), MNL, MeiYa and Inotera, as amended by Amendment No. 1 on April 9, 2010, and terminated pursuant to this Agreement.

"**MCA Termination**" has the meaning set forth in Section 2.3.

"**MeiYa**" means MeiYa Technology Corporation (MeiYa Technology Corporation [Translation from Chinese]), a company incorporated under the laws of the Republic of China.

"**Micron**" shall have the meaning set forth in the preamble to this Agreement.

"**Micron-Inotera NDA**" means that certain Micron-Inotera Mutual Nondisclosure Agreement, dated as of the date hereof, between Micron and Inotera.

"**MNL**" means Micron Semiconductor B.V., a private limited liability company organized under the laws of the Netherlands.

"**MSA**" means Micron Semiconductor Asia Pte. Ltd., a private limited company organized under the laws of Singapore.

"**MTAP**" means Micron Technology Asia Pacific, Inc., an Idaho corporation.

"**NTC**" means Nanya Technology Corporation (Nanya Technology Corporation [Translation from Chinese]), a company incorporated under the laws of the Republic of China.

"**Numonyx B.V.**" means Numonyx Holdings B.V., a private limited liability company organized under the laws of the Netherlands.

"**Party**" and "**Parties**" shall have the meaning set forth in the preamble to this Agreement.

"**Patents**" means all issued and unexpired patents issued by a Governmental Entity, including any and all divisionals, continuations, continuations-in-part, reissues, reexaminations, extensions, foreign counterparts or equivalents of any of the foregoing, wherever and whenever existing.

"**Person**" means any natural person, corporation, joint stock company, limited liability company, association, partnership, firm, joint venture, organization, business, trust, estate or any other entity or organization of any kind or character.

"**Prior JV Documents**" shall have the meaning set forth in the recitals to this Agreement.

"**Prior JV Parties**" shall have the meaning set forth in the recitals to this Agreement.

"**Process Node**" means a collection of process technology and equipment that enables the production of semiconductor wafers for a particular minimum repeatable half pitch of a device (minimum physical feature size or line width) and often designated by the size of such pitch (*e.g.*, the 68 nm Process Node or the 50 nm Process Node, etc.).

"**Representative**" means with respect to a Party, any director, officer, employee, agent or Contractor of such Party or a professional advisor to such Party, such as an attorney, banker or financial advisor of such Party who is under an obligation of confidentiality to such Party by contract or ethical rules applicable to such Person.

"**Supply Agreement**" means that certain Supply Agreement dated the date hereof, among Micron, MSA and Inotera.

"**Third Party**" means any Person other than NTC, Micron or Inotera or any of their respective Affiliates.

"**TTA**" means that certain Technology Transfer Agreement dated November 26, 2008, among the Parties and NTC, as amended by Amendment No. 1 as of April 9, 2010, Addendum No. 1 as of April 9, 2010, and Addendum No. 2 as of June 8, 2011..

"**TTA Termination**" shall have the meaning set forth in Section 2.2 to this Agreement.

"**TTA 68-50**" shall have the meaning set forth in Section 2.1 to this Agreement.

"**TTA 68-50 Termination**" shall have the meaning set forth in Section 2.1 to this Agreement.

"**TTLA**" means that certain Second Amended and Restated Technology Transfer and License Agreement effective April 9, 2010, between Micron and NTC.

1.2 **Certain Interpretive Matters**.

(a) Unless the context requires otherwise, (i) all references to Sections, Articles, Exhibits, Appendices or Schedules are to Sections, Articles, Exhibits, Appendices or Schedules of or to this Agreement, (ii) each accounting term not otherwise defined in this Agreement has the meaning commonly applied to it in accordance with GAAP, (iii) words in the singular include the plural and vice versa, (iv) the term "**including**" means "including without limitation," and (v) the terms "**herein**," "**hereof**," "**hereunder**" and words of similar import shall mean references to this Agreement as a whole and not to any individual section or portion hereof. All references to "**day**" or "**days**" mean calendar days, and all references to "**quarter(ly)**," "**month(ly)"** or "**year(ly)**" mean Fiscal Quarter, Fiscal Month or Fiscal Year, respectively, unless the context requires otherwise.

(b) No provision of this Agreement will be interpreted in favor of, or against, any Party by reason of the extent to which (i) such Party or its counsel participated in the drafting thereof, or (ii) such provision is inconsistent with any prior draft of this Agreement or such provision.

## ARTICLE II

## TERMINATIONS WITH SURVIVAL/AMENDMENTS

2.1 **Technology Transfer Agreement for 68-50nm Process Nodes**. The Technology Transfer Agreement for 68-50nm Process Nodes ("**TTA 68-50**") is hereby terminated (including any provisions that, pursuant to the TTLA 68-50, are expressly stated to survive termination) effective retroactively as of the Effective Date ("**TTA 68-50 Termination**"). Following the effectiveness of the TTA 68-50 Termination:

(a) all of the technology transfer obligations set forth in Article 2 of the TTA 68-50 shall be deemed satisfied, and Micron shall have no further obligation of whatever sort or nature with respect to the transfer of such technology, or with respect to the provision of wafers or engineering services to, Inotera;

(b) Inotera shall have no claim or right under any provision of the TTA 68-50 [***]; and

(c) as a result of such TTA 68-50 Termination, Inotera shall have no obligation to cease the use or exploitation of any materials transferred to it from Micron pursuant to the TTA 68-50.

2.2 **Technology Transfer Agreement**. The TTA is hereby terminated (including any provisions that, pursuant to the TTA, are expressly stated to survive termination) effective retroactively as of the Effective Date ("**TTA Termination**"). Following the effectiveness of the TTA Termination:

(a) Inotera shall no longer have any right under Section 2.1 of the TTA to receive a transfer from either Micron or NTC of any JDP Work Product or other technology;

(b) any payments which had accrued under Article 3 of the TTA prior to the effectiveness of the TTA Termination and which remain outstanding as of the date hereof shall remain due and owing, and shall be paid pursuant to the provisions set forth in Article 3 of the TTA;

(c) NTC shall have no further claim or right under [***] of the TTA with respect to [***] after the effectiveness of the TTA Termination, and shall further have no right of [***] with respect to such [***];

(d) no Party shall have any obligations under Article 4 with respect to a Patent Review Committee;

(e) Inotera shall be entitled to [***] (i) all inventions conceived [***], whether before the effectiveness of the TTA Termination or thereafter, and (ii) to the invention disclosures identified in Schedule 1, attached hereto, and, in the case of (i) and (ii), to [***] in its discretion [***] with respect to such inventions [***]; *provided, however*, that Inotera agrees to [***] under any such [***];

(f) after the effectiveness of the TTA Termination, [***] shall have a right [***] with respect to the [***] of all [***] by one or more [***] agrees promptly to disclose to [***] any such [***] of which it becomes aware, and to cooperate with [***] during the [***] of any [***]; and

(g) the rights and obligations of Section 4.3(f) of the TTA shall survive the TTA Termination, and shall continue to be binding upon Inotera, both with respect to inventions, JDP Work Product, IP Rights or Patents conceived before and after the effectiveness of the TTA Termination, *provided, however*, that Inotera shall have no obligation to [***] with respect to [***].

2.3 **Mutual Confidentiality Agreement**. The MCA is hereby terminated (including any provisions that, pursuant to the TTLA, are expressly stated to survive termination) effective retroactively as of the Effective Date ("**MCA Termination**"). Following the effectiveness of the MCA Termination:

(a) Sections 8(e) and 8(f) of the MCA shall survive MCA Termination and shall remain in effect;

(b) Inotera shall have no right under Section 3 of the MCA to disclose any Confidential Information of Micron or NTC to any Third Party, and the obligations of Inotera under the MCA with respect to information disclosed to or received by Inotera on or after the effective date of the MCA and prior to January 1, 2013, shall continue in effect until five (5) years after Inotera is no longer supplying products to Micron pursuant to the Supply Agreement;

(c) Section 8(c) of the MCA shall not become effective until five (5) years after Inotera is no longer supplying products to Micron; and

(d) confidentiality obligations of the MCA otherwise applicable to Micron with respect to JDP Inventions, JDP Work Product, JDP Process Nodes, JDP Designs or IP Rights or rights to Patents therein shall be superseded and replaced by the amendments to the JDP Agreement, but no other confidentiality obligations under the MCA shall survive or be applicable as to Micron.

## ARTICLE III

## MISCELLANEOUS

3.1 **Assignment**. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto; *provided*, *however*, neither this Agreement nor any right or obligation hereunder may be assigned or delegated by any Party in whole or in part to any other Person, including, without limitation, by merger, operation of law, or through the transfer of all or substantially all of the equity, assets, or business of a Party to this Agreement, without the prior written consent of the non-assigning Party. Any purported assignment in violation of the provisions of this Section 3.1 shall be null and void and have no effect.

3.2 **Compliance with Laws and Regulations**. Each of the Parties shall comply with, and shall use reasonable efforts to require that its respective subcontractors comply with, Applicable Laws relating to this Agreement and the performance of such Party's obligations hereunder.

3.3 **Notice**. All notices and other communications hereunder shall be in writing and shall be deemed given upon (a) transmitter's confirmation of a receipt of a facsimile transmission, (b) confirmation of delivery by a standard overnight or recognized international carrier, or (c) delivery in person, addressed at the following addresses (or at such other address for a Party as shall be specified by like notice):

In the case of Micron:

Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attn: General Counsel
Facsimile: (208) 368-1309

In the case of the Inotera:

Inotera Memories, Inc. (Inotera Memories, Inc. [Translation from Chinese])
667, Fuhsing 3rd Road
Hwa-Ya Technology Park
Kueishan, Taoyuan
Taiwan, R.O.C.
Attn: Head of Legal & IP Office
Facsimile: 886-3-327-2988 Ext.3385

3.4 **Waiver**. The failure at any time of a Party to require performance by another Party of any responsibility or obligation required by this Agreement shall in no way affect a Party's right to require such performance at any time thereafter, nor shall the waiver by a Party of a breach of any provision of this Agreement by another Party constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

3.5 **Severability**. Should any provision of this Agreement be deemed in contradiction with the laws of any jurisdiction in which it is to be performed or unenforceable for any reason, such provision shall be deemed null and void, but this Agreement shall remain in full force and effect in all other respects. Should any provision of this Agreement be or become ineffective because of changes in Applicable Laws or interpretations thereof, or should this Agreement fail to include

a provision that is required as a matter of law, the validity of the other provisions of this Agreement shall not be affected thereby. If such circumstances arise, the Parties shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

3.6 **Third Party Rights**. Nothing in this Agreement, whether express or implied, is intended, or shall be construed, to confer, directly or indirectly, upon or give to any Person, other than the Parties hereto and their respective Subsidiaries, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein. The Subsidiaries of the Parties hereto are third party beneficiaries of this Agreement with respect to, and to the extent, provisions of this Agreement expressly apply to such Subsidiaries.

3.7 **Amendment**. This Agreement may not be modified or amended except by a written instrument executed by, or on behalf of, each of the Parties.

3.8 **Entire Agreement**. This Agreement, together with Schedule 1 and the applicable terms of the other Joint Venture Documents, constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements, amendments and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof, provided however that, in the event that any right, obligation or other provision of this Agreement conflicts with any right, obligation or provision of that certain Waiver and Consent Side Letter Agreement, entered into by and between the Parties and effective October 11, 2012, as amended, the Waiver and Consent Side Letter Agreement shall prevail, and the Parties shall conduct their affairs to give effect to such rights, obligations or provisions as are set forth in the Waiver and Consent Side Letter Agreement.

3.9 **Choice of Law**. This Agreement shall be governed by and construed in accordance with the laws of Delaware, without giving effect to its conflict of laws principles.

3.10 **Jurisdiction; Venue**. Any suit, action or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement shall be brought in the state or federal courts located in California, and each of the Parties hereby consents and submits to the exclusive jurisdiction of such courts (and of the appropriate appellate courts therefrom) in any such suit, action or proceeding and irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of the venue of any such suit, action or proceeding in any such court or that any such suit, action or proceeding which is brought in any such court has been brought in an inconvenient forum.

3.11 **Headings**. The headings of the Articles and Sections in this Agreement are provided for convenience of reference only and shall not be deemed to constitute a part hereof.

3.12 **Counterparts**. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

***[Signature pages follow]***

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first above written.

MICRON TECHNOLOGY, INC.

By: /s/ Michael W. Sadler

Name: Michael W. Sadler

Title: Vice President of Corporate Development

**INOTERA MEMORIES, INC.**

By: /s/ Pei-Ing Lee
Name: Pei-Ing Lee
Title: Supervisor

**EXHIBIT 31.1**

**RULE 13a-14(a) CERTIFICATION OF**
**CHIEF EXECUTIVE OFFICER**

I, D. Mark Durcan, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Micron Technology, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 8, 2013

/s/ D. Mark Durcan

D. Mark Durcan
Chief Executive Officer

**EXHIBIT 31.2**

**RULE 13a-14(a) CERTIFICATION OF**
**CHIEF FINANCIAL OFFICER**

I, Ronald C. Foster, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Micron Technology, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a. Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b. Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c. Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d. Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

   a. All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b. Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: April 8, 2013

/s/ Ronald C. Foster

Ronald C. Foster
Vice President of Finance and Chief Financial Officer

**EXHIBIT 32.1**

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER**
**PURSUANT TO 18 U.S.C. 1350**

I, D. Mark Durcan, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Micron Technology, Inc. on Form 10-Q for the period ended February 28, 2013, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Micron Technology, Inc.

Date: April 8, 2013

/s/ D. Mark Durcan

D. Mark Durcan
Chief Executive Officer

**EXHIBIT 32.2**

**CERTIFICATION OF CHIEF FINANCIAL OFFICER**
**PURSUANT TO 18 U.S.C. 1350**

I, Ronald C. Foster, certify, pursuant to 18 U.S.C. 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that the Quarterly Report of Micron Technology, Inc. on Form 10-Q for the period ended February 28, 2013, fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 and that information contained in the Quarterly Report on Form 10-Q fairly presents, in all material respects, the financial condition and results of operations of Micron Technology, Inc.

Date: April 8, 2013

/s/ Ronald C. Foster

Ronald C. Foster
Vice President of Finance and Chief Financial Officer