

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

FORM 10-Q

(Mark One)

☒

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended December 4, 2008

OR

☐

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

(State or other jurisdiction of
incorporation or organization)

75-1618004

(IRS Employer
Identification No.)

8000 S. Federal Way, Boise, Idaho

(Address of principal executive offices)

83716-9632

(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 ☒ No ☐

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 definition of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act. (Check one):

Large Accelerated Filer ☒

Non-Accelerated Filer ☐

(Do not check if a smaller reporting company)

Accelerated Filer ☐

Smaller Reporting Company ☐

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

The number of outstanding shares of the registrant's common stock as of January 8, 2009 was 763,793,881.

PART I. FINANCIAL INFORMATION

Item 1. Financial Statements

MICRON TECHNOLOGY, INC.

CONSOLIDATED STATEMENTS OF OPERATIONS

(in millions except per share amounts)

(Unaudited)

Quarter ended	December 4, 2008	November 29, 2007
Net sales	\$ 1,402	\$ 1,535
Cost of goods sold	1,851	1,530
Gross margin	(449)	5
Selling, general and administrative	102	112
Research and development	178	163
Restructure	(66)	13
Other operating (income) expense, net	9	(23)
Operating loss	(672)	(260)
Interest income	10	30
Interest expense	(30)	(21)
Other non-operating income (expense), net	(14)	(1)
Loss before taxes and noncontrolling interests	(706)	(252)
Income tax (provision)	(13)	(7)
Noncontrolling interests in net (income) loss	13	(3)
Net loss	\$ (706)	\$ (262)
Loss per share:		
Basic	\$ (0.91)	\$ (0.34)
Diluted	(0.91)	(0.34)
Number of shares used in per share calculations:		
Basic	773.3	771.9
Diluted	773.3	771.9

See accompanying notes to consolidated financial statements.

MICRON TECHNOLOGY, INC.

CONSOLIDATED BALANCE SHEETS

(in millions except par value)
(Unaudited)

As of	December 4, 2008	August 28, 2008
Assets		
Cash and equivalents	\$ 1,025	\$ 1,243
Short-term investments	3	119
Receivables	1,031	1,032
Inventories	883	1,291
Other current assets	95	94
Total current assets	3,037	3,779
Intangible assets, net	354	364
Property, plant and equipment, net	8,460	8,811
Equity method investments	432	84
Other assets	393	392
Total assets	<u>\$ 12,676</u>	<u>\$ 13,430</u>
Liabilities and shareholders' equity		
Accounts payable and accrued expenses	\$ 943	\$ 1,111
Deferred income	192	114
Equipment purchase contracts	157	98
Current portion of long-term debt	343	275
Total current liabilities	1,635	1,598
Long-term debt	2,523	2,451
Other liabilities	332	338
Total liabilities	<u>4,490</u>	<u>4,387</u>
Commitments and contingencies		
Noncontrolling interests in subsidiaries		
	<u>2,702</u>	<u>2,865</u>
Common stock, \$0.10 par value, authorized 3,000 shares, issued and outstanding 763.8 and 761.1 shares, respectively	76	76
Additional capital	6,574	6,566
Accumulated deficit	(1,162)	(456)
Accumulated other comprehensive (loss)	(4)	(8)
Total shareholders' equity	<u>5,484</u>	<u>6,178</u>
Total liabilities and shareholders' equity	<u>\$ 12,676</u>	<u>\$ 13,430</u>

See accompanying notes to consolidated financial statements.

CONSOLIDATED STATEMENTS OF CASH FLOWS

(in millions)

(Unaudited)

Quarter ended	December 4, 2008	November 29, 2007
Cash flows from operating activities		
Net loss	\$ (706)	\$ (262)
Adjustments to reconcile net loss to net cash provided by operating activities:		
Depreciation and amortization	594	504
Provision to write down inventories to estimated market values	369	62
Noncash restructure charges (credits)	(83)	6
(Gain) loss from disposition of equipment, net	14	(10)
Change in operating assets and liabilities:		
(Increase) decrease in receivables	138	(80)
Decrease in inventories	39	27
Decrease in accounts payable and accrued expenses	(67)	(6)
Increase in deferred income	78	2
Other	(17)	33
Net cash provided by operating activities	<u>359</u>	<u>276</u>
Cash flows from investing activities		
Acquisition of equity method investment	(409)	--
Expenditures for property, plant and equipment	(270)	(765)
Purchases of available-for-sale securities	(2)	(123)
Proceeds from maturities of available-for-sale securities	123	365
Proceeds from sales of property, plant and equipment	6	64
Proceeds from sales of available-for-sale securities	--	19
Other	63	34
Net cash used for investing activities	<u>(489)</u>	<u>(406)</u>
Cash flows from financing activities		
Proceeds from debt	285	--
Cash received from noncontrolling interests	--	150
Repayments of debt	(163)	(212)
Distributions to noncontrolling interests	(150)	--
Payments on equipment purchase contracts	(64)	(122)
Other	4	2
Net cash used for financing activities	<u>(88)</u>	<u>(182)</u>
Net decrease in cash and equivalents	(218)	(312)
Cash and equivalents at beginning of period	1,243	2,192
Cash and equivalents at end of period	<u>\$ 1,025</u>	<u>\$ 1,880</u>
Supplemental disclosures		
Income taxes paid, net	\$ (8)	\$ (6)
Interest paid, net of amounts capitalized	(29)	(21)
Noncash investing and financing activities:		
Equipment acquisitions on contracts payable and capital leases	153	152

See accompanying notes to consolidated financial statements.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

(All tabular amounts in millions except per share amounts)

(Unaudited)

Business and Significant Accounting Policies

Basis of presentation: Micron Technology, Inc. and its subsidiaries (hereinafter referred to collectively as the “Company”) manufacture and market DRAM, NAND Flash memory, CMOS image sensors and other semiconductor components. The Company has two segments, Memory and Imaging. The Memory segment’s primary products are DRAM and NAND Flash and the Imaging segment’s primary product is CMOS image sensors. The accompanying consolidated financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America and include the accounts of the Company and its consolidated subsidiaries. In the opinion of management, the accompanying unaudited consolidated financial statements contain all adjustments necessary to present fairly the consolidated financial position of the Company and its consolidated results of operations and cash flows.

The Company’s fiscal year is the 52 or 53-week period ending on the Thursday closest to August 31. The Company’s fiscal 2009 contains 53 weeks and the Company’s first quarter of fiscal 2009, which ended on December 4, 2008, contained 14 weeks. The Company’s fiscal 2008, which ended on August 28, 2008, contained 52 weeks and the Company’s first quarter of fiscal 2008 contained 13 weeks. All period references are to the Company’s fiscal periods unless otherwise indicated. These interim financial statements should be read in conjunction with the consolidated financial statements and accompanying notes included in the Company’s Annual Report on Form 10-K for the year ended August 28, 2008.

Risks and uncertainties: The Company’s liquidity is highly dependent on average selling prices for its products and the timing of capital expenditures, both of which can vary significantly from period to period. Depending on conditions in the semiconductor memory market, the Company’s cash flows from operations and current holdings of cash and investments may not be adequate to meet the Company’s needs for capital expenditures and operations. Historically, the Company has used external financing to fund these needs. Due to conditions in the credit markets, many financing instruments used by the Company in the past are currently not available on terms acceptable to the Company. The Company has significantly reduced its capital expenditures for 2009. In addition, the Company is pursuing further financing alternatives, further reducing capital expenditures and implementing further cost-cutting initiatives.

Recently issued accounting standards: In December 2008, the Financial Accounting Standards Board (“FASB”) issued FASB Staff Position (“FSP”) No. FAS 140-1 and FIN 46(R)-8, “Disclosures by Public Entities (Enterprises) about Transfers of Financial Assets and Interests in Variable Interest Entities.” FSP No. FAS 140-1 and FIN 46(R)-8 requires public entities to provide additional disclosures about transfers of financial assets and their involvement with variable interest entities. The Company is required to adopt FSP No. FAS 140-1 and FIN 46(R)-8 effective in the second quarter of 2009.

In May 2008, the FASB issued FSP No. APB 14-1, “Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement).” FSP No. APB 14-1 requires that issuers of convertible debt instruments that may be settled in cash upon conversion separately account for the liability and equity components in a manner that will reflect the entity’s nonconvertible debt borrowing rate as interest cost is recognized in subsequent periods. The Company is required to adopt FSP No. APB 14-1 at the beginning of 2010. On adoption, the Company will retrospectively account for its \$1.3 billion of 1.875% convertible senior notes issued in May of 2007 under the provisions of FSP No. APB 14-1. The Company estimates that debt recognized on issuance of the \$1.3 billion convertible senior notes would be approximately \$400 million lower under FSP No. APB 14-1. The difference of approximately \$400 million would be accreted to interest expense over the approximate seven-year term of the notes. The Company is continuing to evaluate the full impact that the adoption of FSP No. APB 14-1 will have on its financial statements.

In December 2007, the FASB issued Statement of Financial Accounting Standards (“SFAS”) No. 141 (revised 2007), “Business Combinations” (“SFAS No. 141(R)”), which establishes the principles and requirements for how an acquirer in a business combination (1) recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interests in the acquiree, (2) recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase, and (3) determines what information to disclose. The Company is required to adopt SFAS No. 141(R) effective at the beginning of 2010. The impact of the adoption of SFAS No. 141(R) will depend on the nature and extent of business combinations occurring on or after the beginning of 2010.

In December 2007, the FASB issued SFAS No. 160, “Noncontrolling Interests in Consolidated Financial Statements – an amendment of ARB No. 51.” SFAS No. 160 requires that (1) noncontrolling interests be reported as a separate component of equity, (2) net income attributable to the parent and to the noncontrolling interest be separately identified in the income statement, (3) changes in a parent’s ownership interest while the parent retains its controlling interest be accounted for as equity transactions, and (4) any retained noncontrolling equity investment upon the deconsolidation of a subsidiary be initially measured at fair value. The Company is required to adopt SFAS No. 160 effective at the beginning of 2010. The Company is evaluating the impact that the adoption of SFAS No. 160 will have on its financial statements.

In February 2007, the FASB issued SFAS No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities – Including an amendment of FASB Statement No. 115.” Under SFAS No. 159, the Company may elect to measure many financial instruments and certain other items at fair value on an instrument by instrument basis, subject to certain restrictions. The Company adopted SFAS No. 159 effective at the beginning of 2009. The Company did not elect to measure any existing items at fair value upon the adoption of SFAS No. 159.

In September 2006, the FASB issued SFAS No. 157, “Fair Value Measurements.” SFAS No. 157 (as amended by subsequent FSP’s) defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. The Company adopted SFAS No. 157 effective at the beginning of 2009 for financial assets and financial liabilities. The adoption did not have a significant impact on the Company’s financial statements. The Company is required to adopt SFAS No. 157 for all other assets and liabilities at the beginning of 2010 and it is evaluating the impact that the adoption will have on its financial statements.

Supplemental Balance Sheet Information

Receivables	December 4, 2008	August 28, 2008
Trade receivables (net of allowance of \$3 and \$2, respectively)	\$ 643	\$ 741
Income and other taxes	31	43
Other	357	248
	<u>\$ 1,031</u>	<u>\$ 1,032</u>

As of December 4, 2008, other receivables included amounts due from Intel Corporation (“Intel”) of \$208 million in connection with the termination of a supply agreement for NAND Flash memory produced at the Company’s Boise facility and \$36 million related to NAND Flash product design and process development activities. (See “Restructure” note.) Other receivables as of December 4, 2008 also included \$77 million due from settlement of litigation. As of August 28, 2008, other receivables included \$71 million due from Intel for amounts related to NAND Flash product design and process development activities, \$75 million due from settlement of litigation and \$58 million due from settlements of pricing adjustments with certain suppliers.

Other noncurrent assets as of August 28, 2008 included receivables of \$39 million due from settlement of litigation.

Inventories	December 4, 2008	August 28, 2008
Finished goods	\$ 328	\$ 444
Work in process	395	671
Raw materials and supplies	160	176
	<u>\$ 883</u>	<u>\$ 1,291</u>

The Company’s results of operations for the first quarter of 2009 and fourth, second and first quarters of 2008 included charges of \$369 million, \$205 million, \$15 million and \$62 million, respectively, to write down the carrying value of work in process and finished goods inventories of memory products (both DRAM and NAND Flash) to their estimated market values.

Intangible Assets and Goodwill

Intangible Assets:

	December 4, 2008		August 28, 2008	
	Gross Amount	Accumulated Amortization	Gross Amount	Accumulated Amortization
Product and process technology	\$ 580	\$ (327)	\$ 577	\$ (320)
Customer relationships	127	(39)	127	(35)
Other	29	(16)	29	(14)
	<u>\$ 736</u>	<u>\$ (382)</u>	<u>\$ 733</u>	<u>\$ (369)</u>

During the first quarters of 2009 and 2008, the Company capitalized \$12 million and \$11 million, respectively, for product and process technology with weighted-average useful lives of 10 years.

Amortization expense for intangible assets was \$22 million and \$20 million for the first quarters of 2009 and 2008, respectively. Annual amortization expense for intangible assets is estimated to be \$73 million for 2009, \$63 million for 2010, \$57 million for 2011, \$48 million for 2012 and \$45 million for 2013.

Goodwill: As of December 4, 2008 and August 28, 2008, the Company had goodwill of \$58 million related to its Imaging segment.

Property, Plant and Equipment	December 4, 2008	August 28, 2008
Land	\$ 99	\$ 99
Buildings	4,370	3,829
Equipment	12,934	13,591
Construction in progress	143	611
Software	<u>282</u>	<u>283</u>
	17,828	18,413
Accumulated depreciation	<u>(9,368)</u>	<u>(9,602)</u>
	<u>\$ 8,460</u>	<u>\$ 8,811</u>

Depreciation expense was \$569 million and \$484 million for the first quarters of 2009 and 2008, respectively.

Equity Method Investments

The Company has a partnering arrangement with Nanya Technology Corporation (“Nanya”) pursuant to which the Company and Nanya jointly develop process technology and designs to manufacture stack DRAM products. Each party generally bears its own development costs and the Company’s development costs are expected to exceed Nanya’s development costs by a significant amount. In addition, the Company has transferred and licensed certain intellectual property related to the manufacture of stack DRAM products to Nanya and licensed certain intellectual property from Nanya. The Company is to receive an aggregate of \$207 million from Nanya through 2010. Further, the Company will receive royalties from Nanya for stack DRAM products manufactured by or for Nanya.

The Company has partnered with Nanya in investments in two Taiwan DRAM memory manufacturers: Inotera Memories, Inc. (“Inotera”) and MeiYa Technology Corporation (“MeiYa”). As of December 4, 2008, the Company owned 35.5% of Inotera and 50% of MeiYa and Nanya owned 35.6% of Inotera and 50% of MeiYa. The Company’s investments in Inotera and MeiYa are accounted for under the equity method because of the Company’s ability to exercise significant influence over the operating and financial policies of these entities. As of December 4, 2008 and August 28, 2008, the Company’s aggregate carrying value of these equity method investments in the accompanying consolidated balance sheet was \$432 million and \$84 million, respectively.

The Company has concluded that both Inotera and MeiYa are variable interest entities as defined in FIN 46(R), “Consolidation of Variable Interest Entities – an interpretation of ARB No. 51,” and that the Company is not the primary beneficiary of either Inotera or MeiYa. The Company’s exposure to losses on its equity investments in these entities is limited to the carrying value of such investments. The creditors of Inotera and MeiYa have recourse only to the assets of these two entities and do not have recourse to any other assets of the Company.

Inotera and MeiYa each have fiscal years that end on December 31. As these fiscal years differ from that of the Company’s fiscal year, the Company recognizes its share of Inotera and MeiYa quarterly earnings or losses for the calendar quarter that ends within the Company’s fiscal quarter. This results in the recognition of the Company’s share of earnings or losses from these entities for a period that lags the Company’s fiscal periods by approximately two months.

Inotera: In the first quarter of 2009, the Company acquired a 35.5% ownership interest (or approximately 1.2 billion shares) in Inotera, a publicly traded entity in Taiwan, from Qimonda AG (“Qimonda”) for approximately \$400 million. The interest in Inotera was acquired for cash, a portion of which was funded from loan proceeds of \$200 million received by the Company from Nan Ya Plastics Corporation, an affiliate of Nanya, and \$85 million received from Inotera. The loans were recorded at their fair values, which reflect an aggregate discount of \$31 million from their face amounts. The aggregate discount was recorded as a reduction of the Company’s basis in the investment in Inotera. The Company also capitalized \$10 million of costs and other fees incurred in connection with the acquisition. As a result of the above transactions, as of December 4, 2008 the carrying value of the Company’s equity investment in Inotera was \$378 million. Because the Company did not acquire its interest in Inotera until October and November of 2008, the Company’s results of operations for the first quarter of 2009 do not include any share of Inotera’s results of operations for the quarterly period ended September 30, 2008. The Company is in the process of determining any difference between the carrying value of its investment in Inotera and its proportionate interest in the underlying equity of Inotera and expects to complete such analysis in the second quarter of 2009. The closing trading price of Inotera on December 4, 2008 was equivalent to approximately \$0.20 per share. (See “Debt” note.)

The Company has rights and obligations to purchase 50% of the 120,000 per month 300mm DRAM wafer production of Inotera. Inotera’s actual wafer production will vary from time to time based on market and other conditions. In connection with the acquisition of the shares in Inotera, the Company and Nanya entered into a Supply Agreement with Inotera (the “Supply Agreement”) pursuant to which Inotera will sell to the Company and Nanya trench and stack DRAM products manufactured by Inotera. Inotera’s current trench production capacity is expected to transition to the Company’s stack process technology. Inotera will sell to the Company and Nanya all of the trench DRAM products manufactured by it other than trench DRAM products that are sold by Inotera to Qimonda pursuant to a separate supply agreement between Inotera and Qimonda (the “Qimonda Supply Agreement”). Under the Qimonda Supply Agreement, Qimonda is obligated to purchase trench DRAM products started for it by Inotera for approximately eight months following the Company’s acquisition of the shares in Inotera in accordance with a ramp down schedule specified in the Qimonda Supply Agreement. Initially, (a) with respect to trench DRAM products, the Company will purchase the products resulting from 50% of Inotera’s aggregate trench DRAM production less the trench DRAM products contemplated to be purchased by Qimonda pursuant to the Qimonda Supply Agreement and (b) with respect to stack DRAM products, the Company will purchase the products resulting from 50% of the aggregate stack DRAM production. The pricing formula that determines the amounts to be paid by the Company for DRAM products under the Supply Agreement includes manufacturing costs and margins associated with the products purchased.

MeiYa: In the fourth quarter of 2008, the Company and Nanya formed MeiYa to manufacture stack DRAM products and sell such products exclusively to the Company and Nanya. As of December 4, 2008 and August 28, 2008, the carrying value of the Company’s equity investment in MeiYa was \$54 million and \$84 million, respectively. In the first quarter of 2009, the Company recognized \$2 million of losses for its share of MeiYa’s results of operations for the quarterly period ended September 30, 2008. In addition, during the first quarter of 2009, the Company received \$50 million from MeiYa which was accounted for as a technology transfer fee and a reduction of the Company’s investment in MeiYa. In connection with the purchase of the ownership interest in Inotera, the Company entered into a series of agreements with Nanya which contemplated the restructuring of MeiYa and pursuant to which both parties will cease future funding of, and resource commitments to, MeiYa.

Accounts Payable and Accrued Expenses	December 4, 2008	August 28, 2008
Accounts payable	\$ 513	\$ 597
Salaries, wages and benefits	199	244
Customer advances	100	130
Income and other taxes	34	27
Other	97	113
	<u>\$ 943</u>	<u>\$ 1,111</u>

As of December 4, 2008 and August 28, 2008, customer advances included \$99 million and \$129 million, respectively, for the Company's obligation to provide certain NAND Flash memory products to Apple Computer, Inc. ("Apple") until December 31, 2010 pursuant to a prepaid NAND Flash supply agreement. As of December 4, 2008 and August 28, 2008, other accounts payable and accrued expenses included \$18 million and \$16 million, respectively, for amounts due to Intel for NAND Flash product design and process development and licensing fees pursuant to a research and development cost-sharing arrangement.

As of December 4, 2008 and August 28, 2008, other noncurrent liabilities included \$83 million pursuant to the supply agreement with Apple.

Debt	December 4, 2008	August 28, 2008
Convertible senior notes payable, interest rate of 1.875%, due June 2014	\$ 1,300	\$ 1,300
Notes payable in periodic installments through July 2015, weighted-average effective interest rate of 8.3% and 4.5%, respectively, net of unamortized discount of \$33 and \$3, respectively	852	699
Capital lease obligations payable in monthly installments through February 2023, weighted-average imputed interest rate of 6.5 % and 6.6%, respectively	644	657
Convertible subordinated notes payable, interest rate of 5.6%, due April 2010	70	70
	<u>2,866</u>	<u>2,726</u>
Less current portion	(343)	(275)
	<u>\$ 2,523</u>	<u>\$ 2,451</u>

In connection with the purchase of its 35.5% interest in Inotera, the Company entered into a two-year variable rate term loan with Nan Ya Plastics and a six-month variable rate term loan with Inotera. On November 26, 2008, the Company received loan proceeds of \$200 million from Nan Ya Plastics and \$85 million from Inotera, which are payable at the end of each loan term. Under the terms of the loan agreements, interest is payable quarterly at LIBOR plus 2%. The interest rates reset quarterly and were 4.2% per annum as of December 4, 2008. The Company recorded the debt net of aggregate discounts of \$31 million, which will be recognized as interest expense over the respective lives of the loans, resulting in an effective interest rate of 12.1% for the Nan Ya Plastics loan and 11.6% for the Inotera loan. The Nan Ya Plastics loan is collateralized by a first priority security interest in the Inotera shares owned by the Company (approximate carrying value of \$378 million as of December 4, 2008). (See "Equity Method Investments" note.)

TECH Semiconductor Singapore Pte. Ltd. ("TECH"), the Company's joint venture subsidiary, has a credit facility that is collateralized by substantially all of the assets of TECH, which had an approximate carrying value of \$1,744 million as of December 4, 2008.

Contingencies

The Company has 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. The Company is currently a party to other legal actions arising out of the normal course of business, none of which is expected to have a material adverse effect on the Company's business, results of operations or financial condition.

In the normal course of business, the Company is a party to a variety of agreements pursuant to which it 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 the Company's obligations and the unique facts and circumstances involved in each particular agreement. Historically, payments made by the Company under these types of agreements have not had a material effect on the Company's business, results of operations or financial condition.

The Company is involved in the following patent, antitrust and securities matters.

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 the Company's products or manufacturing processes infringe their intellectual property rights. In this regard, the Company is engaged in litigation with Rambus, Inc. ("Rambus") relating to certain of Rambus' patents and certain of the Company's claims and defenses. Lawsuits between Rambus and the Company 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. In the U.S. District Court for the Northern District of California, trial is scheduled to begin on January 21, 2009 on a patent phase of the case alleging that certain Company memory products infringe Rambus patents. The Company also is engaged in patent litigation with Mosaid Technologies, Inc. ("Mosaid") in the U.S. District Court for the Northern District of California. Among other things, the above lawsuits pertain to certain of the Company's SDRAM, DDR SDRAM, DDR2 SDRAM, DDR3 SDRAM, RDRAM and image sensor products, which account for a significant portion of net sales.

The Company is unable to predict the outcome of assertions of infringement made against the Company and therefore cannot estimate the range of possible loss. A court determination that the Company's products or manufacturing processes infringe the intellectual property rights of others could result in significant liability and/or require the Company to make material changes to its products and/or manufacturing processes. Any of the foregoing could have a material adverse effect on the Company's business, results of operations or financial condition.

Antitrust Matters: At least sixty-eight purported class action price-fixing lawsuits have been filed against the Company and other DRAM suppliers in various federal and state courts in the United States and in Puerto Rico on behalf of indirect purchasers alleging price-fixing in violation of federal and state antitrust laws, violations of 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 treble damages sustained by purported class members 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 proceedings. On January 29, 2008, the Northern District of California court granted in part and denied in part the Company's motion to dismiss plaintiffs' second amended consolidated complaint. Plaintiffs subsequently filed a motion seeking certification for interlocutory appeal of the decision. On February 27, 2008, plaintiffs filed a third amended complaint. On June 26, 2008, the United States Court of Appeals for the Ninth Circuit accepted plaintiffs' interlocutory appeal.

In addition, various states, through their Attorneys General, have filed suit against the Company and other DRAM manufacturers. On July 14, 2006, and on September 8, 2006 in an amended complaint, the following Attorneys General filed suit in the U.S. District Court for the Northern District of California: Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and the Commonwealth of the Northern Mariana Islands. Thereafter, three states, Ohio, New Hampshire, and Texas, voluntarily dismissed their claims. The remaining states filed a third amended complaint on October 1, 2007. Alaska, Delaware, Kentucky, and Vermont subsequently voluntarily dismissed their claims. The amended complaint alleges, among other things, violations of the Sherman Act, Cartwright Act, and certain other states' consumer protection and antitrust laws and seeks damages, and injunctive and other relief. Additionally, on July 13, 2006, the State of New York filed a similar suit in the U.S. District Court for the Southern District of New York. That case was subsequently transferred to the U.S. District Court for the Northern District of California for pre-trial purposes. The State of New York filed an amended complaint on October 1, 2007. 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.

Three purported class action DRAM lawsuits also have been filed in Quebec, Ontario, and British Columbia, Canada, on behalf of direct and indirect purchasers, alleging violations of the Canadian Competition Act. The substantive allegations in these cases are similar to those asserted in the cases filed in the United States. In May and June 2008 respectively, plaintiffs’ motion for class certification was denied in the British Columbia and Quebec cases. Plaintiffs subsequently filed an appeal of each of those decisions.

In February and March 2007, All American Semiconductor, Inc., Jaco Electronics, Inc., and the DRAM Claims Liquidation Trust each filed suit against the Company and other DRAM suppliers in the U.S. District Court for the Northern District of California after opting-out of a direct purchaser class action suit that was settled. The complaints allege, among other things, violations of federal and state antitrust and competition laws in the DRAM industry, and seek damages, injunctive relief, and other remedies.

On October 11, 2006, the Company received a grand jury subpoena from the U.S. District Court for the Northern District of California seeking information regarding an investigation by the DOJ into possible antitrust violations in the “Static Random Access Memory” or “SRAM” industry. In December 2008, the Company was informed that the DOJ closed its investigation of the SRAM industry.

Subsequent to the issuance of subpoenas to the SRAM industry, a number of purported class action lawsuits have been filed against the Company and other SRAM suppliers. Six 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 purchased SRAM directly from various SRAM suppliers during the period from November 1, 1996 through December 31, 2005. Additionally, at least seventy-four cases have been filed in various U.S. District Courts asserting claims on behalf of a purported class of individuals and entities that indirectly purchased SRAM and/or products containing SRAM from various SRAM suppliers during the time period from November 1, 1996 through December 31, 2006. In September 2008, a class of direct purchasers was certified, and plaintiffs were granted leave to amend their complaint to cover Pseudo-Static RAM or “PSRAM” products as well. The complaints allege price fixing in violation of federal antitrust laws and state antitrust and unfair competition laws and seek treble monetary damages, restitution, costs, interest and attorneys’ fees.

Three purported class action SRAM lawsuits also have been filed in Canada, on behalf of direct and indirect purchasers, alleging violations of the Canadian Competition Act. The substantive allegations in these cases are similar to those asserted in the SRAM cases filed in the United States.

In addition, three purported class action lawsuits alleging price-fixing of Flash products have been filed in Canada, asserting violations of the Canadian Competition Act. These cases assert claims on behalf of a purported class of individuals and entities that purchased Flash memory directly and indirectly from various Flash memory suppliers.

On May 5, 2004, Rambus filed a complaint in the Superior Court of the State of California (San Francisco County) against the Company and other DRAM suppliers. The complaint alleges various causes of action under California state law including conspiracy to restrict output and fix prices on Rambus DRAM (“RDRAM”) and unfair competition. Trial is currently scheduled to begin in March 2009. The complaint seeks treble damages, punitive damages, attorneys’ fees, costs, and a permanent injunction enjoining the defendants from the conduct alleged in the complaint.

The Company is unable to predict the outcome of these lawsuits and investigations and therefore cannot estimate the range of possible loss. The final resolution of these alleged violations of antitrust laws could result in significant liability and could have a material adverse effect on the Company’s business, results of operations or financial condition.

Securities Matters: On February 24, 2006, a putative class action complaint was filed against the Company and certain of its officers in the U.S. District Court for the District of Idaho alleging claims under Section 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder. Four substantially similar complaints subsequently were filed in the same Court. The cases purport to be brought on behalf of a class of purchasers of the Company’s stock during the period February 24, 2001 to February 13, 2003. The five lawsuits have been consolidated and a consolidated amended class action complaint was filed on July 24, 2006. The complaint generally alleges violations of federal securities laws based on, among other things, claimed misstatements or omissions regarding alleged illegal price-fixing conduct. The complaint seeks unspecified damages, interest, attorneys’ fees, costs, and expenses. On December 19, 2007, the Court issued an order certifying the class but reducing the class period to purchasers of the Company’s stock during the period from February 24, 2001 to September 18, 2002.

In addition, on March 23, 2006, a shareholder derivative action was filed in the Fourth District Court for the State of Idaho (Ada County), allegedly on behalf of and for the benefit of the Company, against certain of the Company's current and former officers and directors. The Company also was named as a nominal defendant. An amended complaint was filed on August 23, 2006 and subsequently dismissed by the Court. Another amended complaint was filed on September 6, 2007. The amended complaint is based on the same allegations of fact as in the securities class actions filed in the U.S. District Court for the District of Idaho and alleges breach of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets, unjust enrichment, and insider trading. The amended complaint seeks unspecified damages, restitution, disgorgement of profits, equitable and injunctive relief, attorneys' fees, costs, and expenses. The amended complaint is derivative in nature and does not seek monetary damages from the Company. However, the Company may be required, throughout the pendency of the action, to advance payment of legal fees and costs incurred by the defendants. On January 25, 2008, the Court granted the Company's motion to dismiss the second amended complaint without leave to amend. On March 10, 2008, plaintiffs filed a notice of appeal to the Idaho Court of Appeals.

The Company is unable to predict the outcome of these cases and therefore cannot estimate the range of possible loss. A court determination in any of these actions against the Company could result in significant liability and could have a material adverse effect on the Company's business, results of operations or financial condition.

Fair Value Measurements

SFAS No. 157 establishes 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), observable 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: Assets measured at fair value on a recurring basis as of December 4, 2008 were as follows:

	Level 1	Level 2	Total Balance
Money market ⁽¹⁾	\$ 513	\$ --	\$ 513
Commercial paper ⁽¹⁾	--	112	112
U.S. government and agencies ⁽¹⁾	184	--	184
Certificates of deposit ⁽¹⁾	--	133	133
Corporate notes and bonds ⁽²⁾	3	--	3
Marketable equity investments ⁽³⁾	6	--	6
	<u>\$ 706</u>	<u>\$ 245</u>	<u>\$ 951</u>

⁽¹⁾Included in cash and equivalents

⁽²⁾Included in short-term investments

⁽³⁾Included in other assets

Level 2 assets are valued using observable inputs in active markets for similar assets or alternative pricing sources and models utilizing market observable inputs. During the first quarter of 2009, the Company recognized an other-than-temporary impairment of \$7 million for marketable equity instruments.

Fair value measurements on a nonrecurring basis: As of December 4, 2008, non-marketable equity investments of \$13 million were valued at fair value using Level 3 inputs. In the first quarter of 2009, the Company identified events and circumstances that indicated the fair value of a non-marketable equity investment sustained an other-than-temporary loss in value. The Company recognized an impairment charge of \$2 million to write down the carrying value of this investment to its estimated fair value. The fair value measurement was determined using market multiples derived from industry-comparable companies which were classified as Level 3 inputs, as they were unobservable and require management's judgment due to the absence of quoted market prices, inherent lack of liquidity and the long-term nature of such investments.

During the first quarter of 2009, the Company recorded the loans with Nan Ya Plastics and Inotera at fair value because the stated interest rates were substantially lower than the prevailing rates for loans with comparable terms and collateral and for borrowers with similar credit ratings. The fair values of these loans were determined 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, as well as significant unobservable inputs (Level 3), including interest rates based on published rates for transactions involving borrowers with similar credit ratings as the Company. (See “Debt” note.)

Equity Plans

As of December 4, 2008, the Company had an aggregate of 189.7 million shares of its common stock reserved for issuance under various equity plans, of which 121.5 million shares were subject to outstanding stock awards and 68.2 million shares were available for future grants. Awards are subject to terms and conditions as determined by the Company’s Board of Directors.

Stock options: The Company granted 6.8 million and 0.2 million stock options during the first quarters of 2009 and 2008, respectively, with weighted-average grant-date fair values per share of \$2.31 and \$4.10, respectively.

The fair values of option awards are estimated as of the date of grant using the Black-Scholes option valuation model. The Black-Scholes model was developed for use in estimating the fair value of traded options which have no vesting restrictions and are fully transferable and requires the input of subjective assumptions, including the expected stock price volatility and estimated option life. The expected volatilities utilized by the Company are based on implied volatilities from traded options on the Company’s stock and on historical volatility. The expected life of options granted in 2009 was based, in part, on historical experience and on the terms and conditions of the options. The expected life of options granted prior to 2009 was based on the simplified method provided by the Securities and Exchange Commission. The risk-free rates utilized by the Company are based on the U.S. Treasury yield in effect at the time of the grant. No dividends have been assumed in the Company’s estimated option values. Assumptions used in the Black-Scholes model are presented below:

	Quarter ended	
	December 4, 2008	November 29, 2007
Average expected life in years	4.75	4.25
Weighted-average expected volatility	60%	38%
Weighted-average risk-free interest rate	2.6%	4.0%

Restricted stock: The Company awards restricted stock and restricted stock units (collectively, “Restricted Awards”) under its equity plans. During the first quarter of 2009, the Company granted 1.7 million shares of service-based Restricted Awards and 1.7 million shares of performance-based Restricted Awards. During the first quarter of 2008, the Company granted 1.3 million shares of service-based Restricted Awards and 1.3 million shares of performance-based Restricted Awards. The weighted-average grant-date fair values per share were \$4.48 and \$10.76 for Restricted Awards granted during the first quarters of 2009 and 2008, respectively.

Stock-based compensation expense: Total compensation costs for the Company's equity plans were as follows:

	Quarter ended	
	December 4, 2008	November 29, 2007
Stock-based compensation expense by caption:		
Cost of goods sold	\$ 4	\$ 3
Selling, general and administrative	2	6
Research and development	3	4
	<u>\$ 9</u>	<u>\$ 13</u>
Stock-based compensation expense by type of award:		
Stock options	\$ 7	\$ 6
Restricted stock	2	7
	<u>\$ 9</u>	<u>\$ 13</u>

As of December 4, 2008, \$96 million of total unrecognized compensation costs related to non-vested awards was expected to be recognized through the first quarter of 2013, resulting in a weighted-average period of 1.3 years. Stock-based compensation expense in the above presentation does not reflect any significant income taxes, which is consistent with the Company's treatment of income or loss from its U.S. operations. (See "Income Taxes" note.)

Restructure

In the first quarter of 2009, in response to a challenging global environment for technology products, the Company announced a restructuring of its memory operations. As part of the restructure, the Company's IM Flash joint venture between the Company and Intel terminated its agreement with the Company to obtain NAND Flash memory supply from the Company's Boise facility, reducing the Company's NAND Flash production by approximately 35,000 200mm wafers per month. In addition, the Company and Intel agreed to suspend tooling and the ramp of production at IM Flash's Singapore wafer fabrication facility. The Company has also undertaken additional cost savings measures to increase its competitiveness, including reductions in executive and employee salary and bonuses, a continued hiring freeze, and reduction of other discretionary costs such as outside services, travel and overtime. As a result of these actions, the Company recorded a net \$66 million credit to restructure in the first quarter of 2009, attributable to the Company's Memory segment. The amount includes a \$144 million gain in connection with the termination of the NAND Flash supply agreement. As of December 4, 2008, the Company expected to incur additional restructure costs of approximately \$40 million through 2010. The components of the restructure charges and credits were as follows:

Restructure charge (credit):	
Gain from termination of NAND Flash supply agreement	\$ (144)
Write-down of equipment	56
Severance and other termination benefits	22
Total restructure credit	<u>\$ (66)</u>

As of December 4, 2008, \$6 million of the restructure costs remained unpaid and were included in accounts payable and accrued expenses.

In the first quarter of 2008, the Company recorded a restructure charge of \$13 million, primarily to the Memory segment, for employee severance and related costs and a write-down of certain facilities.

Other Operating (Income) Expense, Net

Other operating (income) expense for the first quarter of 2009 included losses of \$14 million on disposals of semiconductor equipment. Other operating (income) expense for the first quarter of 2008 included \$38 million in receipts from the U.S. government in connection with anti-dumping tariffs, losses of \$27 million from changes in currency exchange rates, and gains of \$10 million on disposals of semiconductor equipment.

Income Taxes

Income taxes for 2009 and 2008 primarily reflect taxes on the Company’s non-U.S. operations and U.S. alternative minimum tax. The Company has a valuation allowance for its net deferred tax asset associated with its U.S. operations. The benefit for taxes on U.S. operations in 2009 and 2008 was substantially offset by changes in the valuation allowance.

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 outstanding plus the dilutive effects of stock options, warrants 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 earnings per share calculations. Antidilutive potential common shares that could dilute basic earnings per share in the future were 219.1 million and 251.0 million for the first quarters of 2009 and 2008, respectively.

	Quarter ended	
	December 4, 2008	November 29, 2007
Net loss available to common shareholders	\$ (706)	\$ (262)
Weighted-average common shares outstanding	773.3	771.9
Loss per share:		
Basic	\$ (0.91)	\$ (0.34)
Diluted	(0.91)	(0.34)

Comprehensive Income (Loss)

Comprehensive loss for the first quarter of 2009 was (\$702) million and included \$4 million, net of tax, of unrealized gains on investments. Comprehensive loss for the first quarter of 2008 was (\$263) million and included de minimis amounts of unrealized gains and losses on investments.

Consolidated Joint Ventures

NAND Flash joint ventures with Intel (“IM Flash”): The Company has formed two joint ventures with Intel (IM Flash Technologies, LLC and IM Flash Singapore LLP) to manufacture NAND Flash memory products for the exclusive benefit of the partners. As of December 4, 2008, the Company owned 51% and Intel owned 49% of IM Flash. The Company has determined that both of the IM Flash joint ventures are variable interest entities as defined in FIN 46(R), and that the Company is the primary beneficiary of both. Accordingly, IM Flash’s financial results are included in the consolidated financial statements of the Company and all amounts pertaining to Intel’s interests in IM Flash are reported as noncontrolling interests in subsidiaries.

IM Flash manufactures NAND Flash memory products based on NAND Flash designs developed by the Company and Intel and licensed to the Company. Product design and other research and development (“R&D”) costs for NAND Flash are generally shared equally between the Company and Intel. As a result of reimbursements received from Intel under this NAND Flash R&D cost-sharing arrangement, the Company’s R&D expenses were reduced by \$32 million and \$53 million in the first quarters of 2009 and 2008, respectively.

IM Flash sells products to the joint venture partners generally in proportion to their ownership at long-term negotiated prices approximating cost. IM Flash sales to Intel were \$318 million and \$223 million for the first quarters of 2009 and 2008, respectively. As of December 4, 2008 and August 28, 2008, IM Flash had receivables from Intel primarily for sales of NAND Flash products of \$161 million and \$144 million, respectively. In addition, as of December 4, 2008, the Company had receivables from Intel of \$208 million in connection with the termination of a supply agreement for NAND Flash memory produced at the Company’s Boise facility and \$36 million related to NAND Flash product design and process development activities. As of December 4, 2008 and August 28, 2008, IM Flash had payables to Intel of \$1 million and \$4 million, respectively, for various services.

Under the terms of a wafer supply agreement, the Company manufactured wafers for IM Flash in its Boise, Idaho facility. In the first quarter of 2009, the Company discontinued production of NAND flash memory for IM Flash at its Boise facility. Also in the first quarter of 2009, IM Flash substantially completed construction of a new 300mm wafer fabrication facility structure in Singapore and the Company and Intel agreed to suspend tooling and the ramp of production at this facility.

In the first quarter of 2009, IM Flash distributed \$145 million to Intel. In the first quarter of 2008, Intel contributed \$150 million to IM Flash. The Company’s ability to access IM Flash’s cash and marketable investment securities (\$249 million as of December 4, 2008) to finance the Company’s other operations is subject to agreement by the joint venture partners. The creditors of IM Flash have recourse only to the assets of IM Flash and do not have recourse to any other assets of the Company.

TECH Semiconductor Singapore Pte. Ltd. (“TECH”): Since 1998, the Company has participated in TECH, a semiconductor memory manufacturing joint venture in Singapore among the Company, Canon Inc. and Hewlett-Packard Company (“HP”). As of December 4, 2008, the Company owned an approximate 73% interest in TECH.

TECH’s cash and marketable investment securities (\$91 million as of December 4, 2008) are not anticipated to be available to finance the Company’s other operations. In March, 2008, TECH entered into a credit facility, which is guaranteed, in part, by the Company.

MP Mask Technology Center, LLC (“MP Mask”): In 2006, the Company formed a joint venture, MP Mask, with Photronics, Inc. (“Photronics”) to produce photomasks for leading-edge and advanced next generation semiconductors. As of December 4, 2008, the Company owned 50.01% and Photronics owned 49.99% of MP Mask.

In 2008, the Company completed the construction of a facility to produce photomasks and leased the facility to Photronics under a build to suit lease agreement. Under the terms of the lease agreement, the Company will receive quarterly lease payments through January 2013. As of December 4, 2008, other receivables included \$12 million and other noncurrent assets included \$43 million for this lease.

Segment Information

The Company’s segments are Memory and Imaging. The Memory segment’s primary products are DRAM and NAND Flash memory and the Imaging segment’s primary product is CMOS image sensors. Segment information reported below is consistent with how it is reviewed and evaluated by the Company’s chief operating decision makers and is based on the nature of the Company’s operations and products offered to customers. The Company does not identify or report depreciation and amortization, capital expenditures or assets by segment.

	Quarter ended	
	December 4, 2008	November 29, 2007
Net sales:		
Memory	\$ 1,222	\$ 1,366
Imaging	180	169
Total consolidated net sales	<u>\$ 1,402</u>	<u>\$ 1,535</u>
Operating income (loss):		
Memory	\$ (675)	\$ (251)
Imaging	3	(9)
Total consolidated operating loss	<u>\$ (672)</u>	<u>\$ (260)</u>

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations

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 the costs of restructure plans, the Company's DRAM development costs relative to Nanya, Inotera's transition to the Company's stack process technology, the supply of DRAM wafers from Inotera Memories, Inc. and manufacturing plans for CMOS image sensors; in "Net Sales" regarding production levels for the second quarter of 2009, future increases in NAND production and demand for Imaging products in the second quarter of 2009; in "Gross Margin" regarding the effects of temporary production slowdowns for the second quarter of 2009 and future charges for inventory write-downs; in "Restructure" regarding the remaining costs of restructure plans; in "Stock-based Compensation" regarding future stock-based compensation costs; in "Liquidity and Capital Resources" regarding capital spending in 2009, future distributions from IM Flash to Intel and capital contributions to TECH; and in "Recently Issued Accounting Standards" regarding the impact from the adoption of new accounting standards. The Company's actual results could differ materially from the Company's 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 "PART II. OTHER INFORMATION – Item 1A. Risk Factors." This discussion should be read in conjunction with the Consolidated Financial Statements and accompanying notes and with the Company's Annual Report on Form 10-K for the year ended August 28, 2008. All period references are to the Company's fiscal periods unless otherwise indicated. The Company's fiscal year is the 52 or 53-week period ending on the Thursday closest to August 31. The Company's fiscal 2009, which ends on September 3, 2009, contains 53 weeks. All production data reflects production of the Company and its consolidated joint ventures.

Overview

The Company is a global manufacturer of semiconductor devices, principally semiconductor memory products (including DRAM and NAND Flash) and CMOS image sensors. The Company operates in two segments: Memory and Imaging. Its products are used in a broad range of electronic applications including personal computers, workstations, network servers, mobile phones and other consumer applications including Flash memory cards, USB storage devices, digital still cameras, MP3/4 players and in automotive applications. The Company markets its products through its internal sales force, independent sales representatives and distributors primarily to original equipment manufacturers and retailers located around the world. The Company's success is largely dependent on the market acceptance of a diversified portfolio of semiconductor memory products, efficient utilization of the Company's manufacturing infrastructure, successful ongoing development of advanced process technologies and generation of sufficient return on research and development investments.

The Company has made significant investments to develop proprietary product and process technology that is implemented in its worldwide manufacturing facilities and through its joint ventures to enable the production of semiconductor products with increasing functionality and performance at lower costs. The Company generally reduces the manufacturing cost of each generation of product through advancements in product and process technology such as its leading-edge line-width process technology and innovative array architecture. The Company continues to introduce new generations of products that offer improved performance characteristics, such as higher data transfer rates, reduced package size, lower power consumption and increased memory density and megapixel count. To leverage its significant investments in research and development, the Company has formed strategic joint ventures under which the costs of developing memory product and process technologies are shared with its joint venture partners. In addition, from time to time, the Company has also sold and/or licensed technology to other parties. The Company is pursuing additional opportunities to recover its investment in intellectual property through partnering and other arrangements.

The semiconductor memory industry is experiencing a severe downturn due to a significant oversupply of products. The downturn has been exacerbated by global economic conditions which have adversely affected demand for semiconductor memory products. Average selling prices per gigabit for the Company's DRAM and NAND Flash products for the first quarter of 2009 decreased 34% and 24%, respectively, compared to the fourth quarter of 2008. Average selling prices per gigabit for the Company's DRAM and NAND Flash products in 2008 were down 51% and 67%, respectively, compared to 2007 and down 63% and 85%, respectively, compared to 2006. These declines significantly outpaced the long-term historical trend. As a result of these market conditions, the Company and other semiconductor memory manufacturers have reported negative gross margins and substantial losses in recent periods. In the first quarter of 2009, the Company reported a net loss \$706 million after reporting a net loss of \$1.6 billion for 2008. In response to these market conditions, on October 9, 2008 the Company announced a plan to restructure its Memory operations. In the first quarter of 2009, the Company discontinued production of NAND flash memory for IM Flash at its Boise facility reducing the Company's NAND flash production by approximately 35,000 200mm wafers per month. In addition, the Company and Intel agreed to suspend tooling and the ramp of NAND Flash production at IM Flash's Singapore wafer fabrication plant. The Company has also undertaken additional cost savings measures to increase its competitiveness, including reductions in executive and employee salary and bonuses, a continued hiring freeze, and reduction of other discretionary costs such as outside services, travel and overtime. As of December 4, 2008, the Company expected to incur additional restructure costs of approximately \$40 million through 2010.

The effects of the worsening global economy and the tightening credit market are also making it increasingly difficult for semiconductor memory manufacturers to obtain external sources of financing to fund their operations. Although the Company believes that it is better positioned than some of its peers, it faces challenges in the current and near term that require it to continue to make significant improvements in its competitiveness. Additionally, the Company is pursuing financing alternatives, delaying capital expenditures and implementing further cost-cutting initiatives.

DRAM joint ventures with Nanya Technology Corporation ("Nanya"): The Company has a partnering arrangement with Nanya Technology Corporation ("Nanya") pursuant to which the Company and Nanya jointly develop process technology and designs to manufacture stack DRAM products. Each party generally bears its own development costs and the Company's development costs are expected to exceed Nanya's development costs by a significant amount. In addition, the Company has transferred and licensed certain intellectual property related to the manufacture of stack DRAM products to Nanya and licensed certain intellectual property from Nanya. The Company is to receive an aggregate of \$207 million from Nanya through 2010. Further, the Company will receive royalties from Nanya for stack DRAM products manufactured by or for Nanya.

The Company has partnered with Nanya in investments in two Taiwan DRAM memory manufacturers: Inotera Memories, Inc. ("Inotera") and MeiYa Technology Corporation ("MeiYa"). As of December 4, 2008, the Company owned 35.5% of Inotera and 50% of MeiYa and Nanya owned 35.6% of Inotera and 50% of MeiYa. The Company's investments in Inotera and MeiYa are accounted for under the equity method because of the Company's ability to exercise significant influence over the operating and financial policies of these entities. As of December 4, 2008 and August 28, 2008, the Company's aggregate carrying value of these equity method investments in the accompanying consolidated balance sheet was \$432 million and \$84 million, respectively. Inotera and MeiYa each have fiscal years that end on December 31. As these fiscal years differ from that of the Company's fiscal year, the Company recognizes its share of Inotera and MeiYa quarterly earnings or losses for the calendar quarter that ends within the Company's fiscal quarter. This results in the recognition of the Company's share of earnings or losses from these entities for a period that lags the Company's fiscal periods by approximately two months.

Inotera: In the first quarter of 2009, the Company acquired a 35.5% ownership interest (or approximately 1.2 billion shares) in Inotera, a publicly traded entity in Taiwan, from Qimonda AG ("Qimonda") for approximately \$400 million. The interest in Inotera was acquired for cash, a portion of which was funded from loan proceeds of \$200 million received by the Company from Nan Ya Plastics Corporation, an affiliate of Nanya, and \$85 million received from Inotera. The loans were recorded at their fair values, which reflect an aggregate discount of \$31 million from their face amounts. The aggregate discount was recorded as a reduction of the Company's basis in the investment in Inotera. The Company also capitalized \$10 million of costs and other fees incurred in connection with the acquisition. As a result of the above transactions, as of December 4, 2008 the carrying value of the Company's equity investment in Inotera was \$378 million. Because the Company did not acquire its interest in Inotera until October and November of 2008, the Company's results of operations for the first quarter of 2009 do not include any share of Inotera's results of operations for the quarterly period ended September 30, 2008.

The Company has rights and obligations to purchase 50% of the 120,000 per month 300mm DRAM wafer production of Inotera. Inotera's actual wafer production will vary from time to time based on market and other conditions. In connection with the acquisition of the shares in Inotera, the Company and Nanya entered into a Supply Agreement with Inotera (the "Supply Agreement") pursuant to which Inotera will sell to the Company and Nanya trench and stack DRAM products manufactured by Inotera. Inotera's current trench production capacity is expected to transition to the Company's stack process technology. Inotera will sell to the Company and Nanya all of the trench DRAM products manufactured by it other than trench DRAM products that are sold by Inotera to Qimonda pursuant to a separate supply agreement between Inotera and Qimonda (the "Qimonda Supply Agreement"). Under the Qimonda Supply Agreement, Qimonda is obligated to purchase trench DRAM products started for it by Inotera for approximately eight months following the Company's acquisition of the shares in Inotera in accordance with a ramp down schedule specified in the Qimonda Supply Agreement. Initially, (a) with respect to trench DRAM products, the Company will purchase the products resulting from 50% of Inotera's aggregate trench DRAM production less the trench DRAM products contemplated to be purchased by Qimonda pursuant to the Qimonda Supply Agreement and (b) with respect to stack DRAM products, the Company will purchase the products resulting from 50% of the aggregate stack DRAM production. The pricing formula that determines the amounts to be paid by the Company for DRAM products under the Supply Agreement includes manufacturing costs and margins associated with the products purchased.

MeiYa: In the fourth quarter of 2008, the Company and Nanya formed MeiYa to manufacture stack DRAM products and sell such products exclusively to the Company and Nanya. In connection with the purchase of the ownership interest in Inotera, the Company entered into a series of agreements with Nanya which contemplate the restructuring of MeiYa and pursuant to which both parties will cease future funding of, and resource commitments to, MeiYa.

(See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Supplemental Balance Sheet Information – Equity Method Investments")

Aptina Imaging Business: The Company is exploring partnering arrangements with outside parties regarding the sale of Aptina in which the Company could retain a minority ownership interest. To that end, the Company began operating Aptina as a separate wholly-owned subsidiary in October 2008. Under the arrangements being considered, the Company expects that it will continue to manufacture CMOS image sensors for some period of time.

Inventory Write-Downs: The Company's results of operations for the first quarter of 2009 and the first, second and fourth quarters of 2008 included charges of \$369 million, \$62 million, \$15 million and \$205 million, respectively, to write down the carrying value of work in process and finished goods inventories of Memory products (both DRAM and NAND Flash) to their estimated market values.

Results of Operations

	First Quarter				Fourth Quarter	
	2009	% of net sales	2008	% of net sales	2008	% of net sales
Net sales:						
Memory	\$ 1,222	87 %	\$ 1,366	89 %	\$ 1,271	88 %
Imaging	180	13 %	169	11 %	178	12 %
	<u>\$ 1,402</u>	<u>100 %</u>	<u>\$ 1,535</u>	<u>100 %</u>	<u>\$ 1,449</u>	<u>100 %</u>
Gross margin:						
Memory	\$ (502)	(41) %	\$ (39)	(3) %	\$ (115)	(9) %
Imaging	53	29 %	44	26 %	50	28 %
	<u>\$ (449)</u>	<u>(32) %</u>	<u>\$ 5</u>	<u>0 %</u>	<u>\$ (65)</u>	<u>(4) %</u>
Selling, general and administrative	\$ 102	7 %	\$ 112	7 %	\$ 107	7 %
Research and development	178	13 %	163	11 %	167	12 %
Restructure	(66)	(5) %	13	1 %	4	--
Other operating (income) expense, net	9	1 %	(23)	(1) %	(5)	--
Net loss	(706)	(50) %	(262)	(17) %	(344)	(24) %

The Company's first quarter of 2009, which ended December 4, 2008, contained 14 weeks as compared to 13 weeks for the fourth and first quarters of 2008.

Net Sales

Total net sales for the first quarter of 2009 decreased 3% as compared to the fourth quarter of 2008 primarily due to a 4% decrease in Memory sales. Memory sales for the first quarter of 2009 reflect significant declines in per gigabit average selling prices as compared to the fourth quarter of 2008 partially offset by increases in gigabits sold. Memory sales were 87% of total net sales for the first quarter of 2009 as compared to 88% and 89% for the fourth and first quarters of 2008. Imaging sales for the first quarter of 2009 were stable as compared to the fourth quarter of 2008. Total net sales for the first quarter of 2009 decreased 9% as compared to the first quarter of 2008 primarily due to an 11% decrease in Memory sales partially offset by a 7% increase in Imaging sales.

In response to market conditions, the Company implemented temporary production slowdowns at some of its manufacturing facilities during the second quarter of 2009. The slowdowns and the shutdown of NAND production for IM Flash at the Company's Boise fabrication facility are expected to reduce production output for Memory and Imaging products in the second quarter of 2009.

The Company has formed partnering arrangements under which it has sold and/or licensed technology to other parties. The Company recognized royalty revenue of \$36 million in the first quarter of 2009, \$38 million in the fourth quarter of 2008 and \$5 million in the first quarter of 2008.

Memory: Memory sales for the first quarter of 2009 decreased 4% from the fourth quarter of 2008 as sales of DRAM products decreased by 10% partially offset by a 6% increase in sales of NAND Flash products.

Sales of DRAM products for the first quarter of 2009 decreased from the fourth quarter of 2008 primarily due to a 34% decline in average selling prices mitigated by a 35% increase in gigabit sales as a result of production increases and inventory reductions. Gigabit production of DRAM products increased approximately 23% for the first quarter of 2009 as compared to the fourth quarter of 2008, primarily due to production efficiencies from improvements in product and process technologies as well as the additional week in the quarter. Sales of DDR2 and DDR3 DRAM products were 25% of the Company's total net sales in the first quarter of 2009 as compared to 28% for the fourth quarter of 2008 and 32% for the first quarter of 2008.

Sales of NAND Flash products for the first quarter of 2009 increased from the fourth quarter of 2008 primarily due to a 40% increase in gigabits sold as a result of production increases and inventory reductions partially offset by a 24% decline in average selling prices per gigabit. Gigabit production of NAND Flash products increased 17% for the first quarter of 2009 as compared to the fourth quarter of 2008, primarily due to transitions to higher density, advanced geometry devices as well as the additional week in the quarter. The Company expects that its gigabit production of NAND Flash products will increase at a slower rate in 2009 than in 2008 primarily due to the completion of production ramps at new 300mm manufacturing facilities in 2008 and the shutdown of 200mm wafer NAND Flash production at the Company's Boise fabrication facility in the first quarter of 2009. Sales of NAND Flash products represented 38% of the Company's total net sales for the first quarter of 2009 as compared to 35% for the fourth quarter of 2008 and 33% for the first quarter of 2008.

Memory sales for the first quarter of 2009 decreased 11% from the first quarter of 2008 primarily due to a 20% decrease in sales of DRAM products partially offset by a 6% increase in sales of NAND Flash products. The decrease in sales of DRAM products for the first quarter of 2009 from the first quarter of 2008 was primarily the result of a 47% decline in average selling prices mitigated by a 43% increase in gigabits sold. Gigabit production of DRAM products increased 56% for the first quarter of 2009 as compared to the first quarter of 2008, primarily due to production efficiencies from improvements in product and process technologies as well as the additional week in the quarter. Sales of NAND Flash products for the first quarter of 2009 increased 6% from the first quarter of 2008 primarily due to a 206% increase in gigabits sold partially offset by a 65% decline in average selling prices. The significant increase in gigabit sales of NAND Flash products was primarily due to a 152% increase in production primarily as a result of the continued ramp of NAND Flash products at the Company's 300mm fabrication facilities and transitions to higher density, advanced geometry devices.

Imaging: Imaging sales for the first quarter of 2009 were stable as compared to the fourth quarter of 2008 reflecting relatively stable average selling prices and unit sales. Imaging sales for the first quarter of 2009 increased by 7% from the first quarter of 2008 primarily due to increased units sales of products with 3-megapixel or higher resolution partially offset by declines in average selling prices. Imaging sales were approximately 13% of the Company's total net sales for the first quarter of 2009 as compared to 12% for the fourth quarter of 2008 and 11% for the first quarter of 2008. The Company expects that unit sales for Imaging will decrease in the second quarter of 2009 due to lower sales of cell phones and other devices incorporating the Company's Imaging products.

Gross Margin

The Company's overall gross margin percentage declined from negative 4% for the fourth quarter of 2008 to negative 32% for the first quarter of 2009 due to a decline in the gross margin percentages for Memory primarily as a result of significant decreases in average selling prices and inventory write-downs for Memory products. The Company's overall gross margin percentage declined from 0% for the first quarter of 2008 due to a decline in the gross margin percentages for Memory primarily as a result of significant decreases in average selling prices and inventory write-downs for Memory products. Temporary production slowdowns that the Company implemented at some of its manufacturing facilities during the second quarter of 2009 are expected to adversely affect per megabit and per unit costs of Memory and Imaging products.

Memory: The Company's gross margin percentage for Memory products declined from negative 9% for the fourth quarter of 2008 to negative 41% for the first quarter of 2009 primarily due to declines in the gross margin for both DRAM and NAND Flash products. Gross margins for DRAM and NAND Flash products for the first quarter of 2009 were adversely affected by declines in average selling prices and inventory write-downs, mitigated by reductions in manufacturing costs.

The Company's gross margins for Memory in 2009 and 2008 were impacted by charges to write down inventories to their estimated market values as a result of the significant decreases in average selling prices for both DRAM and NAND Flash products. The impact of inventory write-downs on gross margins for all periods reflects the period-end inventory write-down less the estimated net effect of prior period write-downs. The effects of inventory write-downs on gross margin for the first quarter of 2009 and fourth and first quarters of 2008 were as follows:

	First Quarter 2009	First Quarter 2008	Fourth Quarter 2008
Period-end inventory write-downs	\$ (369)	\$ (62)	\$ (205)
Estimated net effect of previous write-downs	157	14	13
Net effect of inventory write-downs	<u>\$ (212)</u>	<u>\$ (48)</u>	<u>\$ (192)</u>

As charges to write down inventories are recorded in advance of when inventories are sold, gross margins in subsequent periods are higher than they would be absent the effect of the previous write-downs. In future periods, the Company will be required to record additional inventory write-downs if estimated average selling prices of products held in finished goods and work in process inventories at a quarter-end date are below the manufacturing cost of those products.

The Company's gross margin for DRAM products for the first quarter of 2009 declined from the fourth quarter of 2008, primarily due to the 34% decrease in average selling prices per gigabit and inventory write-downs mitigated by a reduction in production costs per gigabit. The Company achieved manufacturing cost reductions for DRAM products through transitions to higher-density, advanced-geometry devices. DRAM production cost reductions for the first quarter of 2009 were offset by the inventory write-downs. The Company reduced its DRAM manufacturing costs (which exclude inventory write-downs) per gigabit by 12% for the first quarter of 2009 as compared to the fourth quarter of 2008.

The Company's gross margin for NAND Flash products for the first quarter of 2009 declined from the fourth quarter of 2008 primarily due to the 24% decrease in average selling prices per gigabit and inventory write-downs. In addition, results for the fourth quarter of 2008 reflected reduced costs from the recovery of \$70 million for pricing adjustments for NAND Flash products purchased from other suppliers in prior periods. The decline in gross margin was mitigated by a reduction in manufacturing costs per gigabit for NAND Flash products primarily achieved through increased production of higher-density, advanced-geometry devices. Costs of NAND Flash products were also reduced as a result of lower prices for products purchased for sale under the Company's Lexar brand. Excluding the inventory write-downs and the effect of pricing adjustments from other suppliers in the fourth quarter of 2008, the Company reduced its NAND Flash costs per gigabit by 14%. Sales of NAND Flash products include sales from IM Flash to Intel at long-term negotiated prices approximating cost. IM Flash sales to Intel were \$318 million for the first quarter of 2009, \$293 million for the fourth quarter of 2008 and \$223 million for the first quarter of 2008.

The Company's gross margin percentage for Memory products declined to negative 41% for the first quarter of 2009 from negative 3% for the first quarter of 2008 primarily due to lower gross margins on sales of DRAM and NAND Flash products. Declines in gross margins on sales of DRAM products for the first quarter of 2009 as compared to the first quarter of 2008 were primarily due to the 47% decline in average selling prices and inventory write-offs mitigated by per gigabit cost reductions. The Company reduced its DRAM production costs (which exclude inventory write-downs) per gigabit by 35% for the first quarter of 2009 as compared to the first quarter of 2008. Gross margins on NAND Flash products for the first quarter of 2009 declined from the first quarter of 2008 primarily due to the 65% decline in average selling prices and inventory write-offs mitigated by per gigabit cost reductions of 55% (excluding inventory write-offs).

In the first quarter of 2009, the Company's TECH Semiconductor Singapore Pte. Ltd. ("TECH") joint venture accounted for approximately 13% of the Company's total wafer production. TECH primarily produced DDR and DDR2 products in 2009 and 2008. Since TECH utilizes the Company's product designs and process technology and has a similar manufacturing cost structure, the gross margin on sales of TECH products approximates gross margins on sales of similar products manufactured by the Company's wholly-owned operations. (See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Consolidated Joint Ventures – TECH Semiconductor Singapore Pte. Ltd.")

Imaging: The Company's gross margin percentage for Imaging for the first quarter of 2009 improved to 29% from 28% for the fourth quarter of 2008 primarily due to cost reductions. The Company's gross margin for Imaging products for the first quarter of 2009 improved to 29% from 26% for first quarter of 2008, primarily due to cost reductions partially offset by declines in average selling prices.

Selling, General and Administrative

Selling, general and administrative ("SG&A") expenses for the first quarter of 2009 decreased 5% from the fourth quarter of 2008 despite increased costs associated with the additional week in the quarter, primarily due to lower legal expenses and lower payroll expenses and other costs as a result of the Company's restructure initiatives. SG&A expenses for the first quarter of 2009 decreased 9% from the first quarter of 2008 despite increased costs associated with the additional week in the quarter, primarily due to lower payroll expenses and other costs as a result of the Company's restructure initiatives. Future SG&A expense is expected to vary, potentially significantly, depending on, among other things, the number of legal matters that are resolved relatively early in their life-cycle and the number of matters that progress to trial.

For the Company's Memory segment, SG&A expenses as a percentage of sales were 7% for the first quarter of 2009 and the fourth and first quarters of 2008. For the Imaging segment, SG&A expenses as a percentage of sales were 8% for the first quarter of 2009, 11% for the fourth quarter of 2008 and 8% for the first quarter of 2008.

Research and Development

Research and development ("R&D") expenses vary primarily with the number of development wafers processed, the cost of advanced equipment dedicated to new product and process development, and personnel costs. Because of the lead times necessary to manufacture its products, the Company typically begins to process wafers before completion of performance and reliability testing. The Company deems development of a product complete once the product has been thoroughly reviewed and tested for performance and reliability. R&D expenses can vary significantly depending on the timing of product qualification as costs incurred in production prior to qualification are charged to R&D.

R&D expenses for the first quarter of 2009 increased 7% from the fourth quarter of 2008 and 9% from the first quarter of 2008 primarily due to increased costs associated with the additional week in the first quarter of 2009. As a result of reimbursements received from Intel Corporation under a NAND Flash R&D cost-sharing arrangement, R&D expenses were reduced by \$32 million for both the first quarter of 2009 and for the fourth quarter of 2008 and \$53 million for the first quarter of 2008.

For the Company's Memory segment, R&D expenses as a percentage of sales were 11% for the first quarter of 2009, 10% for the fourth quarter of 2008 and 9% for the first quarter of 2008. For the Imaging segment, R&D expenses as a percentage of sales were 22% for the first quarter of 2009, 19% for the fourth quarter of 2008, 22% for the first quarter of 2008.

The Company's process technology R&D efforts are focused primarily on development of successively smaller line-width process technologies which are designed to facilitate the Company's transition to next-generation memory products and CMOS image sensors. Additional process technology R&D efforts focus on advanced computing and mobile memory architectures and new manufacturing materials. Product design and development efforts are concentrated on the Company's 1 Gb and 2 Gb DDR2 and DDR3 products as well as high density and mobile NAND Flash memory (including multi-level cell technology), CMOS image sensors and specialty memory products.

Restructure

In the first quarter of 2009, in response to a challenging global environment for technology products, the Company announced a restructuring of its memory operations. As part of the restructure, the Company's IM Flash joint venture between the Company and Intel terminated its agreement with the Company to obtain NAND Flash memory supply from the Company's Boise facility, reducing the Company's NAND Flash production by approximately 35,000 200mm wafers per month. In addition, the Company and Intel agreed to suspend tooling and the ramp of production at IM Flash's Singapore wafer fabrication facility. The Company has also undertaken additional cost savings measures to increase its competitiveness, including reductions in executive and employee salary and bonuses, a continued hiring freeze, and reduction of other discretionary costs such as outside services, travel and overtime. As a result of these actions, the Company recorded a net \$66 million credit to restructure in the first quarter of 2009, attributable to the Company's Memory segment. The amount includes a \$144 million gain in connection with the termination of the NAND Flash supply agreement. As of December 4, 2008, the Company expected to incur additional restructure costs of approximately \$40 million through 2010. The components of the restructure charges and credits were as follows:

Restructure charge (credit):

Gain from termination of NAND Flash supply agreement	\$	(144)
Write-down of equipment		56
Severance and other termination benefits		22
Total restructure credit	\$	(66)

As of December 4, 2008, \$6 million of the restructure costs remained unpaid and were included in accounts payable and accrued expenses.

In the first quarter of 2008, the Company recorded a restructure charge of \$13 million, primarily to the Memory segment, for employee severance and related costs and a write-down of certain facilities.

Other Operating (Income) Expense, Net

Other operating (income) expense for the first quarter of 2009 included losses of \$14 million on disposals of semiconductor equipment. Other operating (income) expense for the first quarter of 2008 included \$38 million in receipts from the U.S. government in connection with anti-dumping tariffs, losses of \$27 million from changes in currency exchange rates, and gains of \$10 million on disposals of semiconductor equipment.

Income Taxes

Income taxes for 2009 and 2008 primarily reflect taxes on the Company's non-U.S. operations and U.S. alternative minimum tax. The Company has a valuation allowance for its net deferred tax asset associated with its U.S. operations. The benefit for taxes on U.S. operations in 2009 and 2008 was substantially offset by changes in the valuation allowance.

Noncontrolling Interests in Net (Income) Loss

Noncontrolling interests for 2009 and 2008 primarily reflects the share of income or losses of the Company's TECH joint venture attributable to the noncontrolling interests in TECH. (See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Consolidated Joint Ventures – TECH Semiconductor Singapore Pte. Ltd.")

Losses and Earnings from Equity Method Investments

In connection with its DRAM partnering arrangements with Nanya, the Company has two equity method investments: MeiYa and Inotera. Because MeiYa and Inotera each have fiscal years that end on December 31 which differs from the Company's fiscal year, the Company recognizes its share of MeiYa and Inotera quarterly earnings or losses for the calendar quarter that ends within the Company's fiscal quarter. This results in the recognition of results from these entities for a period that lags the Company's fiscal periods by approximately two months. In the first quarter of 2009, the Company recognized \$2 million of losses from MeiYa for the quarterly period ended September 30, 2008. The Company will recognize its share of Inotera's losses or earnings from the acquisition date through December 31, 2008 (Inotera's year end) in the Company's second quarter of 2009. (See "Item 1. Financial Statements – Notes to Consolidated Financial Statements – Supplemental Balance Sheet Information – Equity Method Investments.")

Stock-Based Compensation

Total compensation cost for the Company's equity plans for the first quarter of 2009, the fourth quarter of 2008 and first quarter of 2008 was \$9 million, \$8 million and \$13 million, respectively. Stock compensation expenses fluctuate based on assessments of whether performance conditions will be achieved for the Company's performance-based stock grants. As of December 4, 2008, \$96 million of total unrecognized compensation cost related to non-vested awards was expected to be recognized through the first quarter of 2013.

Liquidity and Capital Resources

As of December 4, 2008, the Company had cash and equivalents and short-term investments totaling \$1.0 billion compared to \$1.4 billion as of August 28, 2008. The balance as of December 4, 2008, included \$249 million held at the Company's IM Flash joint venture and \$91 million held at the Company's TECH joint venture. The Company's ability to access funds held by joint ventures to finance the Company's other operations is subject to agreement by the joint venture partners. Amounts held by TECH are not anticipated to be available to finance the Company's other operations.

The Company's liquidity is highly dependent on average selling prices for its products and the timing of capital expenditures, both of which can vary significantly from period to period. Depending on conditions in the semiconductor memory market, the Company's cash flows from operations and current holdings of cash and investments may not be adequate to meet the Company's needs for capital expenditures and operations. Historically, the Company has used external financing to fund these needs. Due to conditions in the credit markets, many financing instruments used by the Company in the past are currently not available on terms acceptable to the Company. The Company has significantly reduced its capital expenditures for 2009. In addition, the Company is pursuing further financing alternatives, further reducing capital expenditures and implementing further cost-cutting initiatives.

Operating activities: The Company generated \$359 million of cash from operating activities in the first quarter of 2009, which primarily reflects the Company's \$706 million of net loss adjusted by \$594 million for noncash depreciation and amortization expense, a \$369 million noncash charge to write-down inventories to estimated market value and a \$138 million decrease in receivables.

Investing activities: Net cash used by investing activities was \$489 million in the first quarter of 2009, which included cash expenditures of \$409 million for the Company’s 35.5% interest in Inotera and cash expenditures of \$270 million for property, plant and equipment partially offset by the net effect of maturities and purchases of marketable investment securities of \$121 million. A significant portion of the capital expenditures relate to the ramp of IM Flash facilities and 300mm conversion of manufacturing operations at TECH. The Company believes that to develop new product and process technologies, support future growth, achieve operating efficiencies and maintain product quality, it must continue to invest in manufacturing technologies, facilities and capital equipment and research and development. The Company expects 2009 capital spending to approximate \$650 million to \$750 million. As of December 4, 2008, the Company had commitments of approximately \$125 million for the acquisition of property, plant and equipment, nearly all of which are expected to be paid within one year.

In the first quarter of 2009, the Company acquired a 35.5% ownership interest in Inotera, a Taiwanese DRAM memory manufacturer, from Qimonda AG for approximately \$400 million in cash and incurred \$10 million of costs and other fees in connection with the acquisition. (See “Item 1. Financial Statements – Notes to Consolidated Financial Statements – Supplemental Balance Sheet Information – Equity Method Investments.”)

Financing activities: Net cash used by financing activities was \$88 million in the first quarter of 2009, which primarily reflects \$163 million in debt payments, \$150 million of distributions paid to joint venture partners and \$64 million in payments on equipment purchase contracts partially offset by \$285 million in proceeds from borrowings.

During the first quarter of 2009, in connection with the purchase of its 35.5% interest in Inotera, the Company entered into a two-year variable rate term loan with Nan Ya Plastics and a six-month variable rate term loan with Inotera. On November 26, 2008, the Company received loan proceeds of \$200 million from Nan Ya Plastics and \$85 million from Inotera, which are payable at the end of each loan term. Under the terms of the loan agreements, interest is payable quarterly at LIBOR plus 2%. The interest rates reset quarterly and were 4.2% per annum as of December 4, 2008. The Company recorded the debt net of aggregate discounts of \$31 million, which will be recognized as interest expense over the respective lives of the loans, resulting in an effective interest rate of 12.1% for the Nan Ya Plastics loan and 11.6% for the Inotera loan. The Nan Ya Plastics loan is collateralized by a first priority security interest in the Inotera shares owned by the Company (approximate carrying value of \$378 million as of December 4, 2008). (See “Item 1. Financial Statements – Notes to Consolidated Financial Statements – Supplemental Balance Sheet Information – Debt.”)

Joint ventures: In the first quarter of 2009, IM Flash distributed \$145 million to Intel and the Company estimates that it will make additional distributions to Intel of approximately \$360 million through the remainder of 2009. Timing of these distributions and any future contributions, however, is subject to market conditions and approval of the partners.

The Company expects to make additional capital contributions to TECH in 2009. The timing and amount of these contributions is subject to market conditions and partner participation.

Contractual obligations: As of December 4, 2008, contractual obligations for notes payable, capital lease obligations and operating leases were as follows:

	Total	Remainder of 2009	2010	2011	2012	2013	2014 and thereafter
	(amounts in millions)						
Notes payable ¹	\$ 2,489	\$ 183	\$ 335	\$ 443	\$ 179	\$ 24	\$ 1,325
Capital lease obligations ¹	755	159	152	265	50	19	110
Operating leases	85	12	15	13	11	10	24

¹ Includes interest

Recently Issued Accounting Standards

In December 2008, the Financial Accounting Standards Board (“FASB”) issued FASB Staff Position (“FSP”) No. FAS 140-1 and FIN 46(R)-8, “Disclosures by Public Entities (Enterprises) about Transfers of Financial Assets and Interests in Variable Interest Entities.” FSP No. FAS 140-1 and FIN 46(R)-8 requires public entities to provide additional disclosures about transfers of financial assets and their involvement with variable interest entities. The Company is required to adopt FSP No. FAS 140-1 and FIN 46(R)-8 effective in the second quarter of 2009.

In May 2008, the FASB issued FSP No. APB 14-1, “Accounting for Convertible Debt Instruments That May Be Settled in Cash upon Conversion (Including Partial Cash Settlement).” FSP No. APB 14-1 requires that issuers of convertible debt instruments that may be settled in cash upon conversion separately account for the liability and equity components in a manner that will reflect the entity’s nonconvertible debt borrowing rate as interest cost is recognized in subsequent periods. The Company is required to adopt FSP No. APB 14-1 at the beginning of 2010. On adoption, the Company will retrospectively account for its \$1.3 billion of 1.875% convertible senior notes issued in May of 2007 under the provisions of FSP No. APB 14-1. The Company estimates that debt recognized on issuance of the \$1.3 billion convertible senior notes would be approximately \$400 million lower under FSP No. APB 14-1. The difference of approximately \$400 million would be accreted to interest expense over the approximate seven-year term of the notes. The Company is continuing to evaluate the full impact that the adoption of FSP No. APB 14-1 will have on its financial statements.

In December 2007, the FASB issued Statement of Financial Accounting Standards (“SFAS”) No. 141 (revised 2007), “Business Combinations” (“SFAS No. 141(R)”), which establishes the principles and requirements for how an acquirer in a business combination (1) recognizes and measures in its financial statements the identifiable assets acquired, the liabilities assumed, and any noncontrolling interests in the acquiree, (2) recognizes and measures the goodwill acquired in the business combination or a gain from a bargain purchase, and (3) determines what information to disclose. The Company is required to adopt SFAS No. 141(R) effective at the beginning of 2010. The impact of the adoption of SFAS No. 141(R) will depend on the nature and extent of business combinations occurring on or after the beginning of 2010.

In December 2007, the FASB issued SFAS No. 160, “Noncontrolling Interests in Consolidated Financial Statements – an amendment of ARB No. 51.” SFAS No. 160 requires that (1) noncontrolling interests be reported as a separate component of equity, (2) net income attributable to the parent and to the noncontrolling interest be separately identified in the income statement, (3) changes in a parent’s ownership interest while the parent retains its controlling interest be accounted for as equity transactions, and (4) any retained noncontrolling equity investment upon the deconsolidation of a subsidiary be initially measured at fair value. The Company is required to adopt SFAS No. 160 effective at the beginning of 2010. The Company is evaluating the impact that the adoption of SFAS No. 160 will have on its financial statements.

In February 2007, the FASB issued SFAS No. 159, “The Fair Value Option for Financial Assets and Financial Liabilities – Including an amendment of FASB Statement No. 115.” Under SFAS No. 159, the Company may elect to measure many financial instruments and certain other items at fair value on an instrument by instrument basis, subject to certain restrictions. The Company adopted SFAS No. 159 effective at the beginning of 2009. The Company did not elect to measure any existing items at fair value upon the adoption of SFAS No. 159.

In September 2006, the FASB issued SFAS No. 157, “Fair Value Measurements.” SFAS No. 157 (as amended by subsequent FSP’s) defines fair value, establishes a framework for measuring fair value in generally accepted accounting principles and expands disclosures about fair value measurements. The Company adopted SFAS No. 157 effective at the beginning of 2009 for financial assets and financial liabilities. The adoption did not have a significant impact on the Company’s financial statements. The Company is required to adopt SFAS No. 157 for all other assets and liabilities in 2010 and it is evaluating the impact that the adoption will have on its financial statements.

Critical Accounting Estimates

The preparation of financial statements and related disclosures in conformity with U.S. GAAP requires management to make estimates and judgments that affect the reported amounts of assets, liabilities, revenues, expenses and related disclosures. Estimates and judgments are based on historical experience, forecasted future events and various other assumptions that the Company believes to be reasonable under the circumstances. Estimates and judgments may vary under different assumptions or conditions. The Company evaluates its estimates and judgments on an ongoing basis. Management believes the accounting policies below are critical in the portrayal of the Company’s financial condition and results of operations and requires management’s most difficult, subjective or complex judgments.

Acquisitions and consolidations: Determination and the allocation of the purchase price of acquired operations significantly influences the period in which costs are recognized. Accounting for acquisitions and consolidations requires the Company to estimate the fair value of the individual assets and liabilities acquired as well as various forms of consideration given, which involves a number of judgments, assumptions and estimates that could materially affect the amount and timing of costs recognized. The Company typically obtains independent third party valuation studies to assist in determining fair values, including assistance in determining future cash flows, appropriate discount rates and comparable market values.

Contingencies: The Company is subject to the possibility of losses from various contingencies. Considerable judgment is necessary to estimate the probability and amount of any loss from such contingencies. An accrual is made when it is probable that a liability has been incurred or an asset has been impaired and the amount of loss can be reasonably estimated. The Company accrues a liability and charges operations for the estimated costs of adjudication or settlement of asserted and unasserted claims existing as of the balance sheet date.

Goodwill and intangible assets: The Company tests goodwill for impairment annually and whenever events or circumstances make it more likely than not that an impairment may have occurred, such as a significant adverse change in the business climate (including declines in selling prices for products) or a decision to sell or dispose of a reporting unit. Goodwill is tested for impairment using a two-step process. In the first step, the fair value of each reporting unit is compared to the carrying value of the net assets assigned to the unit. If the fair value of the reporting unit exceeds its carrying value, goodwill is considered not impaired. If the carrying value of the reporting unit exceeds its fair value, then the second step of the impairment test must be performed in order to determine the implied fair value of the reporting unit's goodwill. Determining the implied fair value of goodwill requires valuation of all of the Company's tangible and intangible asset and liabilities. If the carrying value of a reporting unit's goodwill exceeds its implied fair value, then the Company would record an impairment loss equal to the difference.

Determining when to test for impairment, the Company's reporting units, the fair value of a reporting unit and the fair value of assets and liabilities within a reporting unit, requires judgment and involves the use of significant estimates and assumptions. These estimates and assumptions include revenue growth rates and operating margins used to calculate projected future cash flows, risk-adjusted discount rates, future economic and market conditions and determination of appropriate market comparables. The Company bases fair value estimates on assumptions it believes to be reasonable but that are unpredictable and inherently uncertain. Actual future results may differ from those estimates. In addition, judgments and assumptions are required to allocate assets and liabilities to reporting units.

The Company tests other identified intangible assets with definite useful lives and subject to amortization when events and circumstances indicate the carrying value may not be recoverable by comparing the carrying amount to the sum of undiscounted cash flows expected to be generated by the asset. The Company tests intangible assets with indefinite lives annually for impairment using a fair value method such as discounted cash flows. Estimating fair values involves significant assumptions, especially regarding future sales prices, sales volumes, costs and discount rates.

Income taxes: The Company is required to estimate its provision for income taxes and amounts ultimately payable or recoverable in numerous tax jurisdictions around the world. Estimates involve interpretations of regulations and are inherently complex. Resolution of income tax treatments in individual jurisdictions may not be known for many years after completion of any fiscal year. The Company is also required to evaluate the realizability of its deferred tax assets on an ongoing basis in accordance with U.S. GAAP, which requires the assessment of the Company's performance and other relevant factors when determining the need for a valuation allowance with respect to these deferred tax assets. Realization of deferred tax assets is dependent on the Company's ability to generate future taxable income.

Inventories: Inventories are stated at the lower of average cost or market value and the Company recorded a charge to write down the carrying value of inventories of memory products to their estimated market values of \$369 million for the first quarter of 2009 and \$282 million in aggregate for 2008. Cost includes labor, material and overhead costs, including product and process technology costs. Determining market value of inventories involves numerous judgments, including projecting average selling prices and sales volumes for future periods and costs to complete products in work in process inventories. To project average selling prices and sales volumes, the Company reviews recent sales volumes, existing customer orders, current contract prices, industry analysis of supply and demand, seasonal factors, general economic trends and other information. When these analyses reflect estimated market values below the Company's manufacturing costs, the Company records a charge to cost of goods sold in advance of when the inventory is actually sold. Differences in forecasted average selling prices used in calculating lower of cost or market adjustments can result in significant changes in the estimated net realizable value of product inventories and accordingly the amount of write-down recorded. For example, a 5% variance in the estimated selling prices would have changed the estimated market value of the Company's semiconductor memory inventory by approximately \$50 million at December 4, 2008. Due to the volatile nature of the semiconductor memory industry, actual selling prices and volumes often vary significantly from projected prices and volumes and, as a result, the timing of when product costs are charged to operations can vary significantly.

U.S. GAAP provides for products to be grouped into categories in order to compare costs to market values. The amount of any inventory write-down can vary significantly depending on the determination of inventory categories. The Company's inventories have been categorized as Memory products or Imaging products. The major characteristics the Company considers in determining inventory categories are product type and markets.

Product and process technology: Costs incurred to acquire product and process technology or to patent technology developed by the Company are capitalized and amortized on a straight-line basis over periods currently ranging up to 10 years. The Company capitalizes a portion of costs incurred based on its analysis of historical and projected patents issued as a percent of patents filed. Capitalized product and process technology costs are amortized over the shorter of (i) the estimated useful life of the technology, (ii) the patent term or (iii) the term of the technology agreement.

Property, plant and equipment: The Company reviews the carrying value of property, plant and equipment for impairment when events and circumstances indicate that the carrying value of an asset or group of assets may not be recoverable from the estimated future cash flows expected to result from its use and/or disposition. In cases where undiscounted expected future cash flows are less than the carrying value, an impairment loss is recognized equal to the amount by which the carrying value exceeds the estimated fair value of the assets. The estimation of future cash flows involves numerous assumptions which require judgment by the Company, including, but not limited to, future use of the assets for Company operations versus sale or disposal of the assets, future selling prices for the Company's products and future production and sales volumes. In addition, judgment is required by the Company in determining the groups of assets for which impairment tests are separately performed.

Research and development: Costs related to the conceptual formulation and design of products and processes are expensed as research and development when incurred. Determining when product development is complete requires judgment by the Company. The Company deems development of a product complete once the product has been thoroughly reviewed and tested for performance and reliability.

Stock-based compensation: Under the provisions of SFAS No. 123(R), stock-based compensation cost is estimated at the grant date based on the fair-value of the award and is recognized as expense ratably over the requisite service period of the award. For stock-based compensation awards with graded vesting that were granted after 2005, the Company recognizes compensation expense using the straight-line amortization method. For performance-based stock awards, the expense recognized is dependent on the probability of the performance measure being achieved. The Company utilizes forecasts of future performance to assess these probabilities and this assessment requires considerable judgment.

Determining the appropriate fair-value model and calculating the fair value of stock-based awards at the grant date requires considerable judgment, including estimating stock price volatility, expected option life and forfeiture rates. The Company develops its estimates based on historical data and market information which can change significantly over time. A small change in the estimates used can result in a relatively large change in the estimated valuation. The Company uses the Black-Scholes option valuation model to value employee stock awards. The Company estimates stock price volatility based on an average of its historical volatility and the implied volatility derived from traded options on the Company's stock.

Item 3. Quantitative and Qualitative Disclosures about Market Risk

Interest Rate Risk

As of December 4, 2008, \$2,002 million of the Company's \$2,866 million of debt was at fixed interest rates. As a result, the fair value of the debt fluctuates based on changes in market interest rates. The estimated fair value of the Company's debt was \$1,876 million as of December 4, 2008 and was \$2,167 million as of August 28, 2008. The Company estimates that as of December 4, 2008, a 1% decrease in market interest rates would change the fair value of the fixed-rate debt by approximately \$29 million. As of December 4, 2008, \$864 million of the Company's debt was at variable interest rates and an increase of 1% would increase annual interest expense by approximately \$9 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 the Company's results of operations or financial condition.

The functional currency for substantially all of the Company's operations is the U.S. dollar. The Company held aggregate cash and other assets in foreign currencies valued at U.S. \$252 million as of December 4, 2008 and U.S. \$425 million as of August 28, 2008. The Company also had aggregate foreign currency liabilities valued at U.S. \$542 million as of December 4, 2008 and U.S. \$580 million as of August 28, 2008. Significant components of the Company's assets and liabilities denominated in foreign currencies were as follows (in U.S. dollar equivalents):

	December 4, 2008			August 28, 2008		
	Singapore Dollars	Yen	Euro	Singapore Dollars	Yen	Euro
Cash and equivalents	\$ 30	\$ 16	\$ 20	\$ 84	\$ 130	\$ 25
Net deferred tax assets	--	100	1	--	85	2
Accounts payable and accrued expenses	(88)	(198)	(46)	(105)	(127)	(61)
Debt	(78)	(7)	(4)	(49)	(108)	(4)
Other liabilities	(8)	(54)	(36)	(8)	(45)	(43)

The Company estimates that, based on its assets and liabilities denominated in currencies other than the U.S. dollar as of December 4, 2008, a 1% change in the exchange rate versus the U.S. dollar would result in foreign currency gains or losses of approximately U.S. \$1 million for the yen, the Singapore dollar and the euro.

Item 4. Controls and Procedures

An evaluation was carried out under the supervision and with the participation of the Company's management, including its principal executive officer and principal financial officer, of the effectiveness of the design and operation of the Company's 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 the Company in the reports that it files or submits under the Exchange Act is 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 the Company's 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 the Company's internal control over financial reporting that have materially affected, or are reasonably likely to materially affect, the Company's internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1. *Legal Proceedings*

Patent Matters

On August 28, 2000, the Company filed a complaint against Rambus, Inc. (“Rambus”) in the U.S. District Court for the District of Delaware seeking monetary damages and declaratory and injunctive relief. Among other things, the Company’s 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 (a) that certain Rambus patents are not infringed by the Company, are invalid, and/or are unenforceable, (b) that the Company has an implied license to those patents, and (c) that Rambus is estopped from enforcing those patents against the Company. On February 15, 2001, Rambus filed an answer and counterclaim in Delaware denying that the Company is entitled to relief, alleging infringement of the eight Rambus patents (later amended to add four additional patents) named in the Company’s declaratory judgment claim, and seeking monetary damages and injunctive relief. In the Delaware action, the Company subsequently added claims and defenses based on Rambus’s 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 favor of the Company holding that Rambus had engaged in spoliation and that the twelve Rambus patents in the suit were unenforceable against the Company.

A number of other suits involving Rambus are currently pending in Europe alleging that certain of the Company’s 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 the Company and Reptronic (a distributor of the Company’s products) in the Court of First Instance of Paris, France; on September 29, 2000, the Company filed suit against Rambus in the Civil Court of Milan, Italy, alleging invalidity and non-infringement. In addition, on December 29, 2000, the Company 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 the Company’s DDR SDRAM products infringe Rambus’ country counterparts to its European patent 1 022 642. In the European suits against the Company, 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 and 1 004 956 European patents invalid and revoked the patents. The declaration of invalidity with respect to the ’068 patent 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 January 13, 2006, Rambus filed a lawsuit against the Company in the U.S. District Court for the Northern District of California. The complaint alleges that certain of the Company’s DDR2, DDR3, RDRAM, and RDRAM II products infringe as many as fourteen Rambus patents and seeks monetary damages, treble damages, and injunctive relief. On June 2, 2006, the Company filed an answer and counterclaim against Rambus alleging among other things, antitrust and fraud claims. The Northern District of California Court subsequently consolidated the antitrust and fraud claims and certain equitable defenses of the Company and other parties against Rambus in a jury trial that began on January 29, 2008. On March 26, 2008, a jury returned a verdict in favor of Rambus on the Company’s antitrust and fraud claims. On November 24, 2008, the Court granted partial summary judgment of infringement in favor of Rambus on one of the patent claims at issue in the case. Trial on the patent phase of that case relating to twelve claims in ten Rambus patents is currently scheduled to begin January 26, 2009.

On July 24, 2006, the Company filed a declaratory judgment action against Mosaid Technologies, Inc. (“Mosaid”) in the U.S. District Court for the Northern District of California seeking, among other things, a court determination that fourteen Mosaid patents are invalid, not enforceable, and/or not infringed. On July 25, 2006, Mosaid filed a lawsuit against the Company and others in the U.S. District Court for the Eastern District of Texas alleging infringement of nine Mosaid patents. On August 31, 2006, Mosaid filed an amended complaint adding three additional Mosaid patents. On October 23, 2006, the California Court dismissed the Company’s declaratory judgment suit based on lack of jurisdiction. The Company appealed that decision to the U.S. Court of Appeals for the Federal Circuit. On February 29, 2008, the U.S. Court of Appeals for the Federal Circuit issued an order reversing the dismissal of the Company’s declaratory judgment action filed in the U.S. District Court for the Northern District of California and remanding the suit to that Court. The Texas action was subsequently transferred to the Northern District of California. Mosaid alleges that certain of the Company’s DRAM and CMOS image sensor products infringe up to twelve Mosaid patents and seeks monetary damages, treble damages, and injunctive relief. The accused products account for a significant portion of our net sales. Trial is currently scheduled for June 5, 2009.

The Company is unable to predict the outcome of these suits. A court determination that the Company’s products or manufacturing processes infringe the product or process intellectual property rights of others could result in significant liability and/or require the Company to make material changes to its products and/or manufacturing processes. Any of the foregoing results could have a material adverse effect on the Company’s business, results of operations or financial condition.

Antitrust Matters

A number of purported class action price-fixing lawsuits have been filed against the Company 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 price fixing in violation of federal antitrust laws and various state antitrust and unfair competition laws and seek treble 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. Cases have been filed in the following states: Arkansas, Arizona, California, Florida, Hawaii, Iowa, Kansas, Massachusetts, Maine, Michigan, Minnesota, Mississippi, Montana, North Carolina, North Dakota, Nebraska, New Hampshire, New Jersey, New Mexico, Nevada, New York, Ohio, Pennsylvania, South Dakota, Tennessee, Utah, Vermont, Virginia, Wisconsin, and West Virginia, and also in the District of Columbia and Puerto Rico. The complaints purport to be on behalf of a class of individuals and entities that indirectly purchased DRAM and/or products containing DRAM in the respective jurisdictions during various time periods ranging from April 1999 through at least June 2002. The complaints allege violations of the various jurisdictions’ antitrust, consumer protection and/or unfair competition laws relating to the sale and pricing of DRAM products and seek treble monetary damages, restitution, costs, interest 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 (San Francisco) for consolidated proceedings. On January 29, 2008, the Northern District of California Court granted in part and denied in part the Company’s motion to dismiss plaintiff’s second amended consolidated complaint. Plaintiffs subsequently filed a motion seeking certification for interlocutory appeal of the decision. On February 27, 2008, plaintiffs filed a third amended complaint. On June 26, 2008, the United States Court of Appeals for the Ninth Circuit accepted plaintiffs’ interlocutory appeal.

Additionally, three cases have been filed in the following Canadian courts: Superior Court, District of Montreal, Province of Quebec; Ontario Superior Court of Justice, Ontario; and Supreme Court of British Columbia, Vancouver Registry, British Columbia. The substantive allegations in these cases are similar to those asserted in the cases filed in the United States. In May and June 2008 respectively, plaintiffs’ motion for class certification was denied in the British Columbia and Quebec cases. Plaintiffs have filed an appeal of each of those decisions.

In addition, various states, through their Attorneys General, have filed suit against the Company and other DRAM manufacturers. On July 14, 2006, and on September 8, 2006 in an amended complaint, the following Attorneys General filed suit in the U.S. District Court for the Northern District of California: Alaska, Arizona, Arkansas, California, Colorado, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and the Commonwealth of the Northern Mariana Islands. Thereafter, three states, Ohio, New Hampshire, and Texas, voluntarily dismissed their claims. The remaining states filed a third amended complaint on October 1, 2007. Alaska, Delaware, Kentucky, and Vermont subsequently voluntarily dismissed their claims. The amended complaint alleges, among other things, violations of the Sherman Act, Cartwright Act, and certain other states’ consumer protection and antitrust laws and seeks damages, and injunctive and other relief. Additionally, on July 13, 2006, the State of New York filed a similar suit in the U.S. District Court for the Southern District of New York. That case was subsequently transferred to the U.S. District Court for the Northern District of California for pre-trial purposes. The State of New York filed an amended complaint on October 1, 2007. 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 February 28, 2007, February 28, 2007 and March 8, 2007, cases were filed against the Company and other manufacturers of DRAM in the U.S. District Court for the Northern District of California by All American Semiconductor, Inc., Jaco Electronics, Inc. and DRAM Claims Liquidation Trust, respectively, that opted-out of a direct purchaser class action suit that was settled. The complaints allege, among other things, violations of federal and state antitrust and competition laws in the DRAM industry, and seek damages, injunctive relief, and other remedies.

On October 11, 2006, the Company received a grand jury subpoena from the U.S. District Court for the Northern District of California seeking information regarding an investigation by the DOJ into possible antitrust violations in the “Static Random Access Memory” or “SRAM” industry. . In December 2008, the Company was informed that the DOJ closed its investigation of the SRAM industry.

Subsequent to the issuance of subpoenas to the SRAM industry, a number of purported class action lawsuits have been filed against the Company and other SRAM suppliers. Six 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 purchased SRAM directly from various SRAM suppliers during the period from November 1, 1996 through December 31, 2005. Additionally, at least seventy-four cases have been filed in various U.S. District Courts asserting claims on behalf of a purported class of individuals and entities that indirectly purchased SRAM and/or products containing SRAM from various SRAM suppliers during the time period from November 1, 1996 through December 31, 2006. In September 2008, a class of direct purchasers was certified, and plaintiffs were granted leave to amend their complaint to cover Pseudo-Static RAM or “PSRAM” products as well. The complaints allege price fixing in violation of federal antitrust laws and state antitrust and unfair competition laws and seek treble monetary damages, restitution, costs, interest and attorneys’ fees.

Three purported class action SRAM lawsuits also have been filed in Canada, on behalf of direct and indirect purchasers, alleging violations of the Canadian Competition Act. The substantive allegations in these cases are similar to those asserted in the SRAM cases filed in the United States.

In addition, three purported class action lawsuits alleging price-fixing of Flash products have been filed in Canada, asserting violations of the Canadian Competition Act. These cases assert claims on behalf of a purported class of individuals and entities that purchased Flash memory directly and indirectly from various Flash memory suppliers.

On May 5, 2004, Rambus filed a complaint in the Superior Court of the State of California (San Francisco County) against the Company and other DRAM suppliers. The complaint alleges various causes of action under California state law including a conspiracy to restrict output and fix prices on Rambus DRAM (“RDRAM”) and unfair competition. Trial is currently scheduled to begin in March 2009. The complaint seeks treble damages, punitive damages, attorneys’ fees, costs, and a permanent injunction enjoining the defendants from the conduct alleged in the complaints.

The Company is unable to predict the outcome of these lawsuits and investigations. The final resolution of these alleged violations of antitrust laws could result in significant liability and could have a material adverse effect on the Company’s business, results of operations or financial condition.

Securities Matters

On February 24, 2006, a putative class action complaint was filed against the Company and certain of its officers in the U.S. District Court for the District of Idaho alleging claims under Section 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder. Four substantially similar complaints subsequently were filed in the same Court. The cases purport to be brought on behalf of a class of purchasers of the Company's stock during the period February 24, 2001 to February 13, 2003. The five lawsuits have been consolidated and a consolidated amended class action complaint was filed on July 24, 2006. The complaint generally alleges violations of federal securities laws based on, among other things, claimed misstatements or omissions regarding alleged illegal price-fixing conduct or the Company's operations and financial results. The complaint seeks unspecified damages, interest, attorneys' fees, costs, and expenses. On December 19, 2007, the Court issued an order certifying the class but reducing the class period to purchasers of the Company's stock during the period from February 24, 2001 to September 18, 2002.

In addition, on March 23, 2006 a shareholder derivative action was filed in the Fourth District Court for the State of Idaho (Ada County), allegedly on behalf of and for the benefit of the Company, against certain of the Company's current and former officers and directors. The Company also was named as a nominal defendant. An amended complaint was filed on August 23, 2006 and was subsequently dismissed by the Court. Another amended complaint was filed on September 6, 2007. The amended complaint is based on the same allegations of fact as in the securities class actions filed in the U.S. District Court for the District of Idaho and alleges breach of fiduciary duty, abuse of control, gross mismanagement, waste of corporate assets, unjust enrichment, and insider trading. The amended complaint seeks unspecified damages, restitution, disgorgement of profits, equitable and injunctive relief, attorneys' fees, costs, and expenses. The amended complaint is derivative in nature and does not seek monetary damages from the Company. However, the Company may be required, throughout the pendency of the action, to advance payment of legal fees and costs incurred by the defendants. On January 25, 2008, the Court granted the Company's motion to dismiss the second amended complaint without leave to amend. On March 10, 2008, plaintiffs filed a notice of appeal to the Idaho Court of Appeals.

The Company is unable to predict the outcome of these cases. A court determination in any of these actions against the Company could result in significant liability and could have a material adverse effect on the Company's business, results of operations or financial condition.

(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 the Company.

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

For the first quarter of 2009, average selling prices of DRAM and NAND Flash products decreased 34% and 24%, respectively, as compared to the fourth quarter of 2008. For 2008, average selling prices of DRAM and NAND Flash products decreased 51% and 67%, respectively, as compared to 2007. For 2007, average selling prices of DRAM and NAND Flash products decreased 23% and 56%, respectively, as compared to 2006. Currently, and at times in the past, average selling prices for our memory products have been below our costs. We recorded aggregate inventory write-downs of \$369 million for the first quarter of 2009, \$282 million in 2008 and \$20 million in 2007 as a result of the significant decreases in average selling prices for our semiconductor memory products. If the estimated market values of products held in finished goods and work in process inventories at a quarter end date are below the manufacturing cost of these products, we recognize charges to cost of goods sold to write down the carrying value of our inventories to market value. Future charges for inventory write-downs could be larger than the amount recorded in 2009 and 2008. If average selling prices for our memory products remain depressed or decrease faster than we can decrease per gigabit costs, as they recently have, our business, results of operations or financial condition could be materially adversely affected.

We may be unable to generate sufficient cash flows or obtain access to external financing necessary to fund our operations 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, facilities and capital equipment, research and development, and product and process technology. We currently estimate our capital spending to approximate between \$650 million to \$750 million for 2009. Cash and investments of IM Flash and TECH are generally not available to finance our other operations. In the past we have utilized external sources of financing when needed and access to capital markets has historically been very important to us. As a result of the severe downturn in the semiconductor memory market, the downturn in general economic conditions, and the adverse conditions in the credit markets, financing instruments that we have used in the past are currently not available on terms acceptable to us and may not be available to us for extended periods. We significantly reduced our capital expenditures for 2009. In addition, we are pursuing further financing alternatives, further reducing capital expenditures and implementing further cost-cutting initiatives. There can be no assurance that we will be able to generate sufficient cash flows or find other sources of financing to fund our operations; make adequate capital investments to remain competitive in terms of technology development and cost efficiency; or access capital markets. Our inability to do the foregoing could have a material adverse effect on our business and results of operations.

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 increase gross margins due to factors including, but not limited to, strategic product diversification decisions affecting product mix, the increasing complexity of manufacturing processes, changes in process technologies or products that inherently 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. Temporary production slowdowns that we implemented at some of our manufacturing facilities during the second quarter of 2009 are expected to adversely affect per megabit costs of Memory products.

An adverse result in our litigation matters could materially adversely affect our business, results of operations or financial condition.

On January 13, 2006, Rambus, Inc. ("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, RLD RAM, and RLD RAM 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. Trial on the patent phase of that case relating to twelve claims in ten Rambus patents is currently scheduled to begin January 26, 2009.

On May 5, 2004, Rambus filed a lawsuit in the Superior Court of the State of California (San Francisco County) against us and other DRAM suppliers. The complaint alleges various causes of action under California state law including conspiracy to restrict output and fix prices on Rambus DRAM ("RDRAM"), and unfair competition. The complaint seeks treble damages, punitive damages, attorneys' fees, costs, and a permanent injunction enjoining the defendants from the conduct alleged in the complaint. Trial is currently scheduled to begin in March 2009. (See "Item 3. Legal Proceedings" for additional details on these cases and other Rambus matters pending in Europe and Delaware.)

We are unable to predict the outcome of these lawsuits. The adverse resolution of these lawsuits could result in significant liability and could have a material adverse effect on our business, results of operations or financial condition.

Our joint ventures and strategic partnerships involve numerous risks.

We have entered into partnering arrangements to manufacture products and develop new manufacturing process technologies and products. These arrangements include our IM Flash NAND flash joint ventures with Intel, our DRAM joint ventures with Nanya, our TECH DRAM joint venture and our MP Mask joint venture with Photonics. These strategic partnerships and joint ventures 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 in the future or we may not be able to agree with partners on the amount, timing or nature of further investments in our joint venture;
- due to financial constraints, our partners may be unable to meet their commitments to us or our joint ventures and may pose credit risks for our transactions with them;
- the terms of our arrangements may turn out to be unfavorable;
- cash flows may be inadequate to fund increased capital requirements;
- we may experience difficulties in transferring technology to joint ventures;
- we may experience difficulties and delays in ramping production at joint ventures; and
- political or economic instability may occur in the countries where our joint ventures and/or partners are located.

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

Economic conditions may harm our business.

Economic and business conditions, including a continuing downturn in the semiconductor memory industry or the overall economy is having an adverse effect on our business. Adverse conditions affect consumer demand for devices that incorporate our products such as personal computers, mobile phones, Flash memory cards and USB devices. Reduced demand for our products could result in continued market oversupply and significant decreases in our selling prices. A continuation of current conditions in 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 losses on our accounts receivables due to credit defaults. As a result, our business, results of operations or financial condition could be materially adversely affected.

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.; Hynix Semiconductor Inc.; Qimonda AG; Samsung Electronics Co., Ltd.; SanDisk Corporation; Toshiba Corporation and from emerging companies in Taiwan and China, who have significantly expanded the scale of their operations. 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. The transitions to smaller line-width process technologies and 300mm wafers in the industry have resulted in significant increases in the worldwide supply of semiconductor memory and will likely lead to future increases. 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. We and several of our competitors have significantly increased production in recent periods through construction of new facilities or expansion of existing facilities. 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 NAND Flash memory operations involve numerous risks.

As a result of severe oversupply in the NAND Flash market, our average selling prices of NAND Flash products decreased 24% as compared to the fourth quarter of 2008 after decreasing 67% for 2008 as compared to 2007 and 56% for 2007 as compared to 2006. As a result, we experienced negative gross margins on sales of our NAND Flash products in 2009 and 2008. In the first quarter of 2009, we discontinued production of NAND flash memory for IM Flash at our Boise facility. The NAND Flash production shutdown reduces IM Flash's NAND flash production by approximately 35,000 200mm wafers per month. In addition, we and Intel agreed to suspend tooling and the ramp of production NAND Flash at IM Flash's Singapore wafer fabrication plant. A continuation of the challenging conditions in the NAND Flash market will materially adversely affect our business, results of operations and financial condition.

We may incur additional restructure charges or not realize the expected benefits of new initiatives to reduce costs across our operations.

In the first quarter of 2009, in response to a challenging global environment for technology products, we announced a restructuring of our memory operations. As part of the restructure, our IM Flash joint venture between us and Intel terminated its agreement with us to obtain NAND Flash memory supply from the our Boise facility, reducing our NAND Flash production by approximately 35,000 200mm wafers per month. In addition, we and Intel agreed to suspend tooling and the ramp of production at IM Flash's Singapore wafer fabrication facility. We have also undertaken additional cost savings measures to increase our competitiveness, including reductions in executive and employee salary and bonuses, a continued hiring freeze, and reduction of other discretionary costs such as outside services, travel and overtime. As a result of these actions, we recorded a net \$66 million credit to restructure in the first quarter of 2009, attributable to our Memory segment. The amount includes a \$144 million gain in connection with the termination of the NAND Flash supply agreement. The restructure credit also includes a \$56 million charge to write down equipment and costs of \$22 million for severance and other employee-related items. As of December 4, 2008, we expected to incur additional restructure costs of approximately \$40 million through 2010. We may incur additional restructure costs or not realize the expected benefits of these new initiatives. As a result of these initiatives, we expect to lose production output, incur restructuring or other infrequent charges and we may experience disruptions in our operations, loss of key personnel and difficulties in delivering products timely.

Our acquisition of a 35.5% interest in Inotera Memories, Inc. involves numerous risks.

In the first quarter of 2009, we acquired a 35.5% ownership interest in Inotera Memories, Inc., a Taiwanese DRAM memory manufacturer, for approximately \$400 million in cash. As a result of this acquisition, we have rights and obligations to purchase 50% of the 120,000 per month 300mm DRAM wafer production of Inotera. Our acquisition of an interest in Inotera involves numerous risks including the following:

- Inotera's ability to meet its ongoing obligations;
- uncertainties relating to Qimonda's purchase of certain agreed quantities of products made using Qimonda's trench technology during the transition period.
- difficulties in converting Inotera production from Qimonda's trench technology to our stack technology;
- difficulties in obtaining financing for capital expenditures necessary to convert Inotera production to our stack technology;
- increasing debt to finance the acquisition;
- uncertainties around the timing and amount of wafer supply received;
- obligations during the technology transition period to procure product based on a competitor's technology which may be difficult to sell and provide product support for due to our limited understanding of the technology;
- recognition in our results of operation of our share of potential Inotera losses; and
- a further decline in margins associated with potentially purchasing product utilizing Qimonda's trench technology at a relatively higher cost than other products manufactured by us and selling them potentially at a lower price than other products produced us.

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.

We are engaged in patent litigation with Mosaid Technologies, Inc. ("Mosaid") in the U.S. District Court for the Northern District of California. Mosaid alleges that certain of our DRAM and CMOS image sensor products infringe up to twelve Mosaid patents and seeks monetary damages, treble damages, and injunctive relief. The accused products account for a significant portion of our net sales. Trial is currently scheduled for June 5, 2009. (See "Item 3. Legal Proceedings" for additional details.)

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.

Allegations of anticompetitive conduct.

A number of purported class action price-fixing lawsuits have been filed against us and other DRAM suppliers. Numerous cases have been filed in various state and federal courts 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 violations of the various jurisdictions' antitrust, consumer protection and/or unfair competition laws relating to the sale and pricing of DRAM products and seek treble monetary damages, restitution, costs, interest 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 (San Francisco) for consolidated proceedings. On January 29, 2008, the Northern District of California Court granted in part and denied in part our motion to dismiss the plaintiff's second amended consolidated complaint. The District Court subsequently certified the decision for interlocutory appeal. On February 27, 2008, plaintiffs filed a third amended complaint. On June 26, 2008, the United States Court of Appeals for the Ninth Circuit accepted plaintiffs' interlocutory appeal. (See "Item 3. Legal Proceedings" for additional details on these cases and related matters.)

Various states, through their Attorneys General, have filed suit against us and other DRAM manufacturers alleging violations of state and federal competition laws. The amended complaint alleges, among other things, violations of the Sherman Act, Cartwright Act, and certain other states' consumer protection and antitrust laws and seeks damages, and 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. (See "Item 3. Legal Proceedings" for additional details on these cases and related matters.)

A number of purported class action lawsuits have been filed against us and other SRAM suppliers asserting claims on behalf of a purported class of individuals and entities that purchased SRAM directly or indirectly from various SRAM suppliers. The complaints allege price fixing in violation of federal antitrust laws and state antitrust and unfair competition laws and seek treble monetary damages, restitution, costs, interest and attorneys' fees. The first trial in these cases is currently scheduled for September 2010. (See "Item 3. Legal Proceedings" for additional details on these cases and related matters.)

Three purported class action lawsuits alleging price-fixing of Flash products have been filed in Canada asserting violations of the Canadian Competition Act. These cases assert claims on behalf of a purported class of individuals and entities that purchased Flash memory directly and indirectly from various Flash memory suppliers. (See "Item 3. Legal Proceedings" for additional details on these cases and related matters.)

We are unable to predict the outcome of these lawsuits. An adverse court determination in any of these lawsuits 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.

Covenants in our debt instruments may obligate us to repay debt, increase contributions to our TECH joint venture and limit our ability to obtain financing.

Our ability to comply with the financial and other covenants contained in our debt may be affected by economic or business conditions or other events. As of December 4, 2008, our 73% owned TECH Semiconductor Singapore Pte. Ltd., (“TECH”) subsidiary, had \$600 million outstanding under a credit facility with covenants that, among other requirements, establish certain liquidity, debt service coverage and leverage ratios for TECH and restrict TECH’s ability to incur indebtedness, create liens and acquire or dispose of assets. If TECH does not comply with these debt covenants and restrictions, this debt may be deemed to be in default and the debt declared payable. Additionally, if TECH is unable to repay its borrowings when due, the lenders under TECH’s credit facility could proceed against substantially all of TECH’s assets. We have guaranteed approximately 73% of the outstanding amount of TECH’s credit facility, and our obligation increases to 100% of the outstanding amount of the facility upon the occurrence of certain conditions. If TECH’s debt is accelerated, we may not have sufficient assets to repay amounts due. Existing covenant restrictions may limit our ability to obtain additional debt financing and to avoid covenant defaults we may have to pay off debt obligations and make additional contributions to TECH, which could adversely affect our liquidity and financial condition.

Allegations of violations of securities laws.

On February 24, 2006, a number of purported class action complaints were filed against us and certain of our officers in the U.S. District Court for the District of Idaho alleging claims under Section 10(b) and 20(a) of the Securities Exchange Act of 1934, as amended, and Rule 10b-5 promulgated thereunder. The cases purport to be brought on behalf of a class of purchasers of our stock during the period February 24, 2001 to February 13, 2003. The five lawsuits have been consolidated and a consolidated amended class action complaint was filed on July 24, 2006. The complaint generally alleges violations of federal securities laws based on, among other things, claimed misstatements or omissions regarding alleged illegal price-fixing conduct. The complaint seeks unspecified damages, interest, attorneys’ fees, costs, and expenses. On December 19, 2007, the Court issued an order certifying the class but reducing the class period to purchasers of our stock during the period from February 24, 2001 to September 18, 2002. (See “Item 3. Legal Proceedings” for additional details on these cases and related matters.)

We are unable to predict the outcome of these cases. An adverse court determination in any of the class action lawsuits against us could result in significant liability and could have a material adverse effect on our business, results of operations or financial condition.

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.

Because the design and production process for semiconductor memory is highly complex, it is possible that we may produce products that do not comply with customer specifications, contain defects or are otherwise incompatible with end uses. If, despite design review, quality control and product qualification procedures, problems with nonconforming, defective or incompatible products occur after we have shipped such products, we could be adversely affected in several ways, including the following:

- we may replace product or otherwise compensate customers for costs incurred or damages caused by defective or incompatible product, and
- we may encounter adverse publicity, which could cause a decrease in sales of our products.

Our debt level is higher than compared to historical periods.

We currently have a higher level of debt compared to historical periods. As of December 4, 2008, we had \$2.9 billion of debt. We may need to incur additional debt in the future. Our debt level could adversely impact us. For example it could:

- make it more difficult for us to make payments on our debt;

- require us to dedicate a substantial portion of our cash flow from operations and other capital resources to debt service;
- limit our future ability to raise funds for capital expenditures, acquisitions, research and development and other general corporate requirements;
- increase our vulnerability to adverse economic and semiconductor memory industry conditions;
- expose us to fluctuations in interest rates with respect to that portion of our debt which is at variable rate of interest; and
- require us to make additional investments in joint ventures to maintain compliance with financial covenants.

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 NAND Flash, Imaging 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 these new products, that we will be able to successfully market these products or that margins generated from sales of these products will recover costs of development efforts.

The future success of our Imaging business will be dependent on continued market acceptance of our products and the development, introduction and marketing of new Imaging products.

We face competition in the image sensor market from a number of suppliers of CMOS image sensors including OmniVision Technologies, Inc.; Samsung Electronics Co., Ltd; Sony Corporation; STMicroelectronics NV; Toshiba Corporation and from a number of suppliers of CCD image sensors including Matsushita Electric Industrial Co., Ltd.; Sharp Corporation and Sony Corporation. In recent periods, a number of new companies have entered the CMOS image sensor market. Competitors include many large domestic and international companies that have greater presence in key markets, better access to certain customer bases, greater name recognition and more established strategic and financial relationships than the Company.

In recent years, our Imaging net sales and gross margins decreased and we faced increased competition. There can be no assurance that we will be able to grow or maintain our market share or gross margins for Imaging products in the future. We expect that unit sales for Imaging will decrease in the second quarter of 2009 due to lower sales of cell phones and other devices incorporating the our Imaging products. Temporary production slowdowns that we implemented at some of our manufacturing facilities during the second quarter of 2009 are expected to adversely affect per unit costs of Imaging products. The success of our Imaging business will depend on a number of factors, including:

- development of products that maintain a technological advantage over the products of our competitors;
- accurate prediction of market requirements and evolving standards, including pixel resolution, output interface standards, power requirements, optical lens size, input standards and other requirements;
- timely completion and introduction of new Imaging products that satisfy customer requirements;
- timely achievement of design wins with prospective customers, as manufacturers may be reluctant to change their source of components due to the significant costs, time, effort and risk associated with qualifying a new supplier; and
- efficient, cost-effective manufacturing as we transition to new products and higher volumes.

Our efforts to restructure our Aptina Imaging business may be unsuccessful.

We are exploring partnering arrangements with outside parties regarding the sale of Aptina in which we could retain a minority ownership interest. To that end, we began operating our Imaging business as a separate, wholly-owned, subsidiary in October 2008. To the extent we form a partnering arrangement, the resulting business model may not be successful and the Imaging operations revenues and margins could be adversely affected. We may incur significant costs to convert Imaging operations to a new business structure and operations could be disrupted. In addition, we may lose key personnel. If our efforts to restructure the Imaging business are unsuccessful, our business, results of operations or financial condition could be materially adversely affected.

We expect to make future acquisitions and alliances, which involve numerous risks.

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

- difficulties in integrating the operations, technologies and products of acquired or newly formed entities;
- increasing capital expenditures to upgrade and maintain facilities;
- increasing debt to finance any acquisition or formation of a new business;
- difficulties in protecting our intellectual property as we enter into a greater number of licensing arrangements;
- diverting management's attention from normal daily operations;
- managing larger or more complex operations and facilities and employees in separate geographic areas; and
- hiring and retaining key employees.

Acquisitions of, or alliances with, high-technology companies are inherently risky, and any future transactions may not be successful and may materially adversely affect our business, results of operations or financial condition.

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

Our financial statements are prepared in accordance with U.S. GAAP and are reported in U.S. dollars. Across our multi-national operations, there are transactions and balances denominated in other currencies, primarily the euro, yen and Singapore dollar. We recorded a net loss of \$25 million from changes in currency exchange rates for 2008. We estimate that, based on its assets and liabilities denominated in currencies other than the U.S. dollar as of December 4, 2008, a 1% change in the exchange rate versus the U.S. dollar would result in foreign currency gains or losses of approximately U.S. \$1 million for the yen, Singapore dollar or euro. In the event that the U.S. dollar weakens significantly compared to the yen, Singapore dollar and euro, our results of operations or financial condition will be adversely affected.

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 80% of our consolidated net sales for the first quarter of 2009. In addition, we have manufacturing operations in China, Italy, Japan, Puerto Rico and Singapore. Our international sales and operations are subject to a variety of risks, including:

- currency exchange rate fluctuations;
- export and import duties, changes to import and export regulations, and restrictions on the transfer of funds;
- 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; and
- compliance with trade and other laws in a variety of jurisdictions.

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

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

We have significant net operating loss and tax credit carryforwards. We have provided significant valuation allowances against the tax benefit of such losses as well as certain tax credit carryforwards. Utilization of these net operating losses and credit carryforwards is dependent upon us achieving sustained profitability. 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 the limitations is complex and requires significant judgment and analysis of past transactions.

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 IM Flash, TECH, Inotera, MeiYa and MP Mask joint ventures may be limited by our agreements with our partners. From time to time, we have experienced minor 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.

Disruptions in our supply of raw materials 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. Various factors could reduce the availability of raw materials such as silicon wafers, photomasks, chemicals, gases, 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.

Item 2. Issuer Purchases of Equity Securities, Unregistered Sales of Equity Securities and Use of Proceeds

During the first quarter of 2009, the Company acquired, as payment of withholding taxes in connection with the vesting of restricted stock and restricted stock unit awards, 153,205 shares of its common stock at an average price per share of \$4.16. The Company retired the 153,205 shares in the first quarter of 2009.

Period	(a) Total number of shares purchased	(b) Average price paid per share	(c) Total number of shares (or units) purchased as part of publicly announced plans or programs	(d) Maximum number (or approximate dollar value) of shares (or units) that may yet be purchased under the plans or programs
August 29, 2008 – October 2, 2008	78,427	\$ 4.34	N/A	N/A
October 3, 2008 – October 30, 2008	71,885	3.95	N/A	N/A
October 31, 2008 – December 4, 2008	2,893	4.38	N/A	N/A
	<u>153,205</u>	4.16		

Item 4. Submission of Matters to a Vote of Security Holders

The Company's 2008 Annual Meeting of Shareholders was held on December 11, 2008. At the meeting, the following items were submitted to a vote of the shareholders:

- (a) The following nominees for Directors were elected. Each person elected as a Director will serve until the next annual meeting of shareholders or until such person's successor is elected and qualified.

Name of Nominee	Votes Cast For	Votes Cast Against/Withheld
Teruaki Aoki	508,733,764	115,522,925
Steven R. Appleton	595,510,929	28,745,760
James W. Bagley	589,125,503	35,131,186
Robert L. Bailey	603,672,439	20,584,250
Mercedes Johnson	568,543,305	55,713,384
Lawrence N. Mondry	515,754,651	108,502,038
Robert E. Switz	602,203,922	22,052,767

- (b) The proposal by the Company to approve an amendment to the Company's 2007 Equity Incentive Plan to increase the number of shares reserved for issuance thereunder by 10,000,000 was approved with 272,872,836 votes in favor, 223,415,211 votes against, 684,556 abstentions and 127,284,086 broker non-votes.

- (c) The ratification of the appointment of PricewaterhouseCoopers LLP as the Independent Registered Public Accounting Firm of the Company for the fiscal year ending September 3, 2009, was approved with 607,039,348 votes in favor, 16,298,304 votes against, and 919,037 abstentions.

Item 6. Exhibits

Exhibit Number	Description of Exhibit
3.1	Restated Certificate of Incorporation of the Registrant (1)
3.2	Bylaws of the Registrant, as amended (2)
10.1	Executive Officer Performance Incentive Plan, as Amended
10.3	1994 Stock Option Plan, as Amended
10.5	1997 Nonstatutory Stock Option Plan, as Amended
10.6	1998 Non-Employee Director Stock Incentive Plan, as Amended
10.7	1998 Nonstatutory Stock Option Plan, as Amended
10.8	2001 Stock Option Plan, as Amended
10.10	2002 Employment Inducement Plan, as Amended
10.11	2004 Equity Incentive Plan, as Amended
10.13	Nonstatutory Stock Option Plan, as Amended
10.15	Lexar Media, Inc. 2000 Equity Incentive Plan, as Amended
10.48	2007 Equity Incentive Plan, as Amended
10.64	Lexar Media, Inc. 1996 Stock Option Plan, as Amended
10.65*	Boise Supply Termination and Amendment Agreement, dated October 10, 2008, by and among Intel Corporation, Micron Technology, Inc. and IM Flash Technologies, LLC
10.66*	Loan Agreement, dated November 26, 2008, by and among Micron Semiconductor B.V., Micron Technology, Inc., and Nan Ya Plastics Corporation
10.67	Loan Agreement, dated November 26, 2008, by and between Micron Technology, Inc. and Inotera Memories, Inc.
10.68	Transition Agreement, dated October 11, 2008, by and among Nanya Technology Corporation, Qimonda AG, Inotera Memories, Inc. and Micron Technology, Inc.
10.69	Micron Guaranty Agreement, dated November 26, 2008, by Micron Technology, Inc. in favor of Nanya Technology Corporation
10.70	Share Purchase Agreement by and among Micron Technology, Inc. as the Buyer Parent, Micron Semiconductor B.V., as the Buyer, Qimonda Ag as the Seller Parent and Qimonda Holding B.V., as the Seller Sub dated as of October 11, 2008
10.71*	Master Agreement, dated November 26, 2008, among Micron Technology, Inc., Micron Semiconductor B.V., Nanya Technology Corporation, MeiYa Technology Corporation and Inotera Memories, Inc.
10.72*	Joint Venture Agreement, dated November 26, 2008, by and between Micron Semiconductor B.V. and Nanya Technology Corporation
10.73*	Facilitation Agreement, dated November 26, 2008, by and between Micron Semiconductor B.V., Nanya Technology Corporation and Inotera Memories, Inc.
10.74*	Supply Agreement, dated November 26, 2008, by and among Micron Technology, Inc., Nanya Technology Corporation and Inotera Memories, Inc.
10.75*	Amended and Restated Joint Development Program Agreement, dated November 26, 2008, by and between Nanya Technology Corporation and Micron Technology, Inc.
10.76*	Amended and Restated Technology Transfer and License Agreement, dated November 26, 2008, by and between Micron Technology, Inc. and Nanya Technology Corporation
10.77*	Technology Transfer Agreement, dated November 26, 2008, by and among Nanya Technology Corporation, Micron Technology, Inc. and Inotera Memories, Inc.
10.78*	Technology Transfer Agreement for 68-50nm Process Nodes, dated October 11, 2008, 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

(1) Incorporated by reference to Quarterly Report on Form 10-Q for the fiscal quarter ended May 31, 2001

(2) Incorporated by reference to Current Report on Form 8-K dated October 1, 2008

* Portions of this exhibit have been omitted pursuant to a request for confidential treatment filed with the U.S. Securities and Exchange 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: January 13, 2009

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

MICRON TECHNOLOGY, INC.
EXECUTIVE OFFICER
PERFORMANCE INCENTIVE PLAN
Effective as of September 3, 2004

1. Purpose.

The purpose of the Plan is to promote the success of the Company by providing performance-based incentive compensation in the form of cash payments ("Awards") to the chief executive officer, president and vice-presidents ("Executive Officers") of the Company. Such Awards are designed to attract, retain and reward the Executive Officers for outstanding business performance. The Plan is intended, but not required, to provide qualified performance-based compensation in accordance with Section 162(m) of the Internal Revenue Code of 1986, as it may be amended from time to time, and the regulations promulgated thereunder ("Section 162(m)").

2. Administration.

The Plan shall be administered by the Committee. The Committee shall be composed solely of two or more outside directors as defined in Section 162(m) and shall qualify as an independent compensation committee under Section 162(m). The Committee shall have full power and authority to construe, interpret and administer the Plan and shall have authority to delegate the day-to-day administration of the Plan to Company employees or to such other persons as the Committee deems reasonable under the circumstances. The Committee shall meet at such times and places as it may determine. A majority of the members of the Committee shall constitute a quorum and all decisions of the Committee with respect to matters related to the Plan shall be final, conclusive and binding upon all persons, including the Company, shareholders, employees, Company successors and assigns and a Participant's spouse, if any, and his or her guardian, estate and/or heirs ("Interested Parties"). The Committee shall have the full and exclusive right to make reductions in Awards under the Plan. In determining whether to reduce any Award and the amount of any such reduction, the Committee shall take into consideration such factors as the Committee shall determine reasonable under the circumstances, in its sole and absolute discretion. All expenses of the administration of the Plan shall be borne by the Company, including all Awards, if any, paid pursuant to the terms of the Plan.

3. Stockholder Approval.

The Plan shall be effective if, and only if, the Company's shareholders approve the Plan. No Award shall be paid under the Plan for any period until after stockholder approval of the Plan has been obtained. To the extent necessary for the Plan to qualify as performance-based compensation under Section 162(m), the material terms of the Plan shall be disclosed to and re-approved by the shareholders no later than the first shareholders meeting that occurs in the fifth year following the year in which shareholders previously approved the material terms of the Plan.

4. Participants.

(a) *Selection of Participants.* For each measurement period (which may or may not be the same period with respect to each Participant and which may or may not be a twelve-month period; provided, however, in no event will a measurement period be less than ninety (90) days for any Participant), the Committee will choose, in its sole discretion, the Executive Officers who will participate in the Plan (each a "Participant"). Nothing in this Plan shall be construed as precluding or prohibiting an Executive Officer from being eligible to participate in any other bonus or compensation arrangement of the Company, whether or not currently established.

(b) *Employment Criteria.* To be eligible to receive an Award under the terms of the Plan with respect to a measurement period, a Participant must be continuously employed by the Company or a subsidiary or affiliate as an Executive Officer for the entire measurement period, including, as well, through the date of determination and certification of the payment of any such Award ("Certification Date"). For purposes of the Plan, with respect to any given measurement period, a Participant who (i) terminates employment (regardless of cause) or who otherwise ceases to be an Executive Officer, prior to the Certification Date and (ii) who, pursuant to a separate contractual arrangement with the Company is entitled to receive payments from the Company thereunder extending to or beyond such Certification Date as a result of such termination or cessation in Executive Officer status, shall be deemed to have been employed by the Company as an Executive Officer through the Certification Date for purposes of Award eligibility.

5. Business Criteria on Which Performance Goals Shall be Based.

Awards under the Plan shall be based on the attainment of Performance Goals for the specified measurement period that are related, directly or indirectly, to one or more of the following objective business criteria, or any combination or portion thereof:

- Gross and/or net revenue (including whether in the aggregate or attributable to specific products)
- Cost of Goods Sold and Gross Margin
- Costs and expenses, including Research & Development and Selling, General & Administrative
- Income (gross, operating, net, etc.)
- Earnings, including before interest, taxes, depreciation and amortization (whether in the aggregate or on a per share basis)
- Cash flows and share price
- Return on investment, capital, equity
- Manufacturing efficiency (including yield enhancement and cycle time reductions), quality improvements and customer satisfaction
- Product life cycle management (including product and technology design, development, transfer, manufacturing introduction, and sales price optimization and management)
- Economic profit or loss
- Market share
- Employee retention, compensation, training and development, including succession planning
- Objective goals consistent with the Participant's specific officer duties and responsibilities, designed to further the financial, operational and other business interests of the Company, including goals and objectives with respect to regulatory compliance matters.

The business criteria may be expressed or measured at the individual, function, department, region, unit, subsidiary, affiliate or Company levels or any combination of the foregoing. Company Performance Goals with respect to the foregoing business criteria may be specified in absolute terms (including completion of pre-established projects, such as the introduction of specified products), in ratios, in percentages, or in terms of growth from period to period, growth rates over time as well as in terms of performance measured relative to an established or specially-created performance index of Company competitors, peers or other members of high tech industries. Any member of an index that disappears during a measurement period shall be disregarded for the entire measurement period. Performance Goals need not be based upon an increase or positive result under a business criterion and could include, for example, the maintenance of the status quo or the limitation of economic losses (measured, in each case, by reference to a specific business criterion).

6. Establishment of Performance Goals.

(a) *Committee Action.* For each measurement period the Committee shall establish the following: (1) the length of the measurement period with respect to each Participant (measurement periods need not be the same for each Participant. Measurement periods will coincide with the Company's fiscal year unless a shorter measurement period is established; provided, however, in no event will a measurement period be less than a three-month period for any Participant); (2) the Participants in the Plan for such period; (3) the specific Company, subsidiary, affiliate, group, division, unit, department, function and/or individual business criterion or criteria, or combination thereof, that will be measured with respect to each Participant; (4) the specific results, or range of results, to be achieved with respect to the selected criterion or criteria ("Performance Goals"); (5) any special adjustments that may need to be applied in calculating whether the Performance Goals have been met to factor out extraordinary items; (6) the formula for calculating the awards under the Plan in relation to the Performance Goals (including instructions for extrapolating the amounts payable when performance results fall in a range between threshold, target and maximum goals), and; (7) the targeted bonus amounts or Awards (expressed in absolute terms or as a percentage of base compensation fixed at the time the performance formula is established) for each Participant.

(b) *Timing of Committee Action.* The Committee shall make the above determinations in writing no later than ninety (90) days after the start of each measurement period, on or before twenty-five percent (25%) of the measurement period has elapsed, and while the outcome is substantially uncertain.

(c) *Maximum Award.* The maximum Award that may be paid to any one Participant with respect to the aggregate of all measurement periods in any fiscal year shall not exceed \$3,000,000.

(d) *Awards Intended to be “performance based compensation” under Section 409A.* With respect to Awards intended to be “performance based compensation” as defined in §1.409A-1(e) of the final regulations under Section 409A of the Internal Revenue Code of 1986, as it may be amended from time to time (“Section 409A”), (1) the measurement period shall be at least 12 consecutive months; (2) Performance Goals shall be established in writing no later than 90 days after the commencement of the period of service to which the criteria relates, provided that the outcome must be substantially uncertain at the time the criteria are established; (3) the Performance Goals may include subjective performance criteria, provided that the subjective performance criteria are bona fide and relate to the performance of the Participant, a group of service providers that includes the Participant, or a business unit for which the Participant provides services (which may include the entire organization); and (4) the Award must meet other applicable requirements of Section 409A.

(e) *Changes in the Business, Executive Officer Positions or Duties, Re-Set Events, Etc.*

(1) *Awards Not Intended to Satisfy Section 162(m).* With respect to Awards not intended to satisfy Section 162(m), if the Committee determines that a change in the business, operations, corporate structure or capital structure of the Company, including any acquisition, disposition or merger, or the manner in which the Company or a subsidiary or affiliate conducts its business, or other events or circumstances render Performance Goals to be unsuitable for a measurement period, the Committee may modify such Performance Goals in whole or in part, and/or such measurement period, as the Committee deems appropriate. If a Participant is promoted, demoted or transferred to a different business unit or function during a measurement period, the Committee may determine that the Performance Goals or measurement period are no longer appropriate and may (i) adjust, change or eliminate the Performance Goals or the applicable measurement period as it deems appropriate to make such goals and period comparable to the initial Performance Goals and measurement period, or (ii) make an Award to the Participant in amount determined by the Committee to be in the best interests of the Company, in the Committee’s sole discretion. The foregoing two sentences shall apply with respect to an Award that is not intended to satisfy Section 162(m).

(2) *Awards Intended to Satisfy Section 162(m).* With respect to Awards intended to satisfy Section 162(m), unless otherwise specified by the Committee in its written determinations establishing the business criteria for the particular measurement period, if prior to the end of such measurement period the Company (i) disposes of businesses or interests that, individually or in the aggregate, represent either (A) five percent (5%) or more of the Company’s consolidated gross revenues for the four fiscal quarters completed immediately preceding the consummation of the dispositions or (B) five percent (5%) of the Company’s consolidated property, plant and equipment, net, measured as of the last day of the fiscal quarter immediately preceding the disposition or (ii) consummates one or more acquisitions during the measurement period that, individually or in the aggregate, constitute a Triggering Acquisition, in each case a “Re-Set Event,” the Performance Goals shall be adjusted, effective as of the last day of the fiscal quarter immediately before the consummation of the Re-Set Event, (x) to reflect the business disposition by eliminating from the Performance Goals the projected business results relating to the disposed business for the remainder of the fiscal quarters of the measurement period, and (y) to reflect any business acquisition, by establishing supplemental performance criteria in compliance with Sections 5 and 6 (a) through (c) above, as the Committee deems appropriate, with respect to the acquired business (which business shall be tracked separately as an independent business unit for purposes of any such supplemental performance criteria). For purposes of this Section, a Triggering Acquisition means an acquisition (or combination of acquisitions) in which either (i) the acquired entity’s gross revenues for the four quarters completed immediately prior to consummation of the acquisition is equal to five percent (5%) or more of the pro-forma gross revenues for the same four quarters for the combination of the Company and its affiliates and the acquired entity, or (ii) the acquired entity’s property, plant and equipment, net, equals or exceeds five percent (5%) of the pro-forma property, plant and equipment, net, for the combination of the Company and its affiliates and the acquired entity .. (If either the Company and its affiliates or the entity being acquired had consummated other acquisitions during the four quarters in question, the calculation described in the prior sentence shall be made using pro-forma earnings for each member of the combined entity.) Notwithstanding the foregoing, nothing in this Section 6(d)(2) will be construed to authorize the Committee to take actions under this Section 6(d)(2) that are not permitted by Section 162(m).

(f) *Change in Control.*

(1) *Awards.* Notwithstanding Section 6(d), in the event of a Change in Control (as defined below), each measurement period shall be deemed to have ended as of the last day of the fiscal month immediately preceding such Change in Control (the “CIC Termination Date”). The Committee shall determine with respect to each

Participant whether his or her Performance Goal(s) were Achieved (as defined below) as of the CIC Termination Date. In the case of any such achievement, a Participant shall receive, subject to the terms and conditions of the Plan, including the Committee's discretion and certification as set forth in Section 7 below, an Award payable within thirty days of the Certification Date. Subject to the Committee's discretion set forth in Section 7(b), Awards that are Achieved as defined in subsection 6(e)(2)(i) shall not be pro-rated and Awards that are Achieved as defined in subsection 6(e)(2)(ii) shall be pro-rated.

(2) *Definitions.* For purposes of this Section 6, the following terms shall be defined as follows:

"Achieved" shall mean with respect to (i) a non-financial or non-numerical Performance Goal, the full achievement of such Performance Goal; and (ii) a financial or numerical Performance Goal, the achievement of results which, when extrapolated over the remainder of the full measurement period, disregarding the CIC Termination Date, would result in the Performance Goal being satisfied.

"Change in Control" means and includes the occurrence of any one of the following events:

(i) individuals who, on the date this Plan becomes effective ("Effective Date"), constitute the Board of Directors of the Company (the "Incumbent Directors") and who cease for any reason to constitute at least a majority of such Board, provided that any person becoming a director after the Effective Date and whose election or nomination for election was approved by a vote of at least a majority of the Incumbent Directors then on the Board shall be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to the election or removal of directors ("Election Contest") or other actual or threatened solicitation of proxies or consents by or on behalf of any Person other than the Board ("Proxy Contest"), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest, shall be deemed an Incumbent Director; or

(ii) any person is or becomes a "beneficial owner" (as defined in Rule 13d-3 under the 1934 Securities Exchange Act), directly or indirectly, of either (A) 35% or more of the then-outstanding shares of common stock of the Company ("Company Common Stock") or (B) securities of the Company representing 35% or more of the combined voting power of the Company's then outstanding securities eligible to vote for the election of directors (the "Company Voting Securities"); provided, however, that for purposes of this subsection (ii), the following acquisitions shall not constitute a Change in Control: (w) an acquisition directly from the Company, (x) an acquisition by the Company or a subsidiary of the Company, (y) an acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any subsidiary of the Company, or (z) an acquisition pursuant to a Non-Qualifying Transaction (as defined in subsection (iii) below); or

(iii) the consummation of a reorganization, merger, consolidation, statutory share exchange or similar form of corporate transaction involving the Company or a subsidiary (a "Reorganization"), or the sale or other disposition of all or substantially all of the Company's assets (a "Sale") or the acquisition of assets or stock of another corporation (an "Acquisition"), unless immediately following such Reorganization, Sale or Acquisition: (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Company Common Stock and outstanding Company Voting Securities immediately prior to such Reorganization, Sale or Acquisition beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Reorganization, Sale or Acquisition (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets or stock either directly or through one or more subsidiaries, the "Surviving Corporation") in substantially the same proportions as their ownership, immediately prior to such Reorganization, Sale or Acquisition, of the outstanding Company Common Stock and the outstanding Company Voting Securities, as the case may be, and (B) no person (other than (x) the Company or any subsidiary of the Company, (y) the Surviving Corporation or its ultimate parent corporation, or (z) any employee benefit plan (or related trust) sponsored or maintained by any of the foregoing is the beneficial owner, directly or indirectly, of 35% or more of the total common stock or 35% or more of the total voting power of the outstanding voting securities eligible to elect directors of the Surviving Corporation, and (C) at least a majority of the members of the board of directors of the Surviving Corporation were Incumbent Directors at the time of the Board's approval of the execution of the initial agreement providing for such Reorganization, Sale or Acquisition (any Reorganization, Sale or Acquisition which satisfies all of the criteria specified in (A), (B) and (C) above shall be deemed to be a "Non-

Qualifying Transaction”); or approval by the shareholders of the Company of a complete liquidation or dissolution of the Company.

7. *Determination and Certification of Attainment of Performance Goals; Committee Discretion.*

(a) *Determination and Certification of Awards.* As soon as practicable following the expiration of a measurement period, the Committee shall determine, pursuant to the Performance Goals and other elements established pursuant to Section 6 above, the Award to be paid to each Participant for such measurement period. The Committee’s determinations shall be final, binding and conclusive with respect to all Interested Parties and shall be certified in writing by the Committee prior to the payment of any such Award, which writing may take the form of a Committee resolution passed by a majority of the Committee at a properly convened meeting or through unanimous action by the Committee via action by written consent. The certification requirement also may be satisfied by a separate writing executed by the Chairman of the Committee, acting in his capacity as such, following the foregoing Committee action or by the Chairman executing approved minutes of the Committee in which such determinations were made.

(b) *Committee Discretion.* The Committee, in its sole discretion, based on any factors the Committee deems appropriate, may reduce the Award to any Participant in any measurement period (including reduction to zero if the Committee so determines). The Committee shall make a determination of whether and to what extent to reduce Awards under the Plan for each measurement period at such time or times following the close of the measurement period as the Committee shall deem appropriate. The reduction in the amount of an Award to any Participant for a measurement period shall have no effect on (i.e., shall neither increase nor decrease) the amount of the Award to any other Participant for such measurement period.

8. *Payment of Awards.*

Awards shall be paid in cash, in a single lump sum, to the Participants as soon as practicable following the Certification Date, provided that any Award intended to satisfy the short-term deferral exemption specified in §1.409A-1(b)(4) of the final regulations under Section 409A, will be paid on or before later of the 15th day of the third month following the end of the Participant’s first taxable year in which the right to the payment is no longer subject to a substantial risk of forfeiture or the 15th day of the third month following the end of the Company’s first taxable year in which the right to the payment is no longer subject to a substantial risk of forfeiture. Notwithstanding the foregoing, subject to applicable law, the Committee may permit or require a Participant to defer the receipt of an Award. If any such deferral is permitted or required, the Board shall, in its sole discretion, establish rules and procedures for such Award deferrals which are compliant with Section 409A.

Payments of Awards to Participants, if any, who are employees of subsidiaries or affiliates of the Company shall be paid directly by such subsidiaries or affiliates. The Company (or such subsidiary or affiliate as the case may be) shall be authorized to withhold applicable taxes from an Award and such other amounts as shall be required by law or as have been previously authorized by the Participant.

9. *Amendment; Termination.*

The Committee shall be authorized to amend, modify, suspend or terminate the Plan, in whole or in part, as the Committee shall deem proper and in the best interests of the Company at any time for the purpose of meeting or addressing any changes in legal requirements or for any other purpose permitted by law. The Committee will seek shareholder approval of any amendment determined to require shareholder approval pursuant to Section 162(m) or any other applicable law, rule regulation or listing requirement.

Notwithstanding anything in the Plan or the terms of any Award or other applicable agreement to the contrary, the Committee may amend the Plan or any Award or other applicable agreement, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan, Award or other applicable agreement to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder. By participating in this Plan, a Participant agrees to any amendment made pursuant to this Section to any Award under the Plan without further consideration or action.

10. Nonassignability.

No Award or any other right or obligation under the Plan shall be conveyed, assigned, encumbered, or transferred by any Participant or Eligible Participant hereunder and any such attempted conveyance, assignment, encumbrance or transfer shall be void.

11. No Right to Continued Employment.

Nothing in this Plan shall confer upon any employee who is an Executive Officer or Participant any right to continue in the employ of the Company or shall interfere with or restrict in any way the right of the Company to discharge such employee at any time for any reason whatsoever, with or without good cause.

12. Effectiveness.

Upon stockholder approval as described in Section 3, the Plan shall be effective for measurement periods beginning on or after September 3, 2004.

13. Special Provisions Related To Section 409A of the Code.

(a) Notwithstanding anything in the Plan or in any Award or other applicable agreement to the contrary, to the extent that any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under the Plan or any Award or other applicable agreement by reason of the occurrence of a change in control, or the participant’s disability or separation from service, such amount or benefit will not be payable or distributable to the Participant by reason of such circumstance unless (i) the circumstances giving rise to such change in control, disability or separation from service meet any description or definition of “change in control event”, “disability” or “separation from service”, as the case may be, in Section 409A and applicable regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A by reason of the short-term deferral exemption or otherwise. This provision does not prohibit the vesting of any Award upon a change in control, disability or separation from service, however defined. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the next earliest payment or distribution date or event specified in the Award or other applicable agreement that is permissible under Section 409A.

(b) If any one or more Awards granted under the Plan to a Participant could qualify for any separation pay exemption described in Treas. Reg. Section 1.409A-1(b)(9), but such Awards in the aggregate exceeds the dollar limit permitted for the separation pay exemptions, the Company (acting through the Committee or the Head of Human Resources) shall determine which Awards or portions thereof will be subject to such exemptions.

(c) Notwithstanding anything in the Plan or in any Award or other applicable agreement to the contrary, if any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A would otherwise be payable or distributable under this Plan or in any Award or other applicable agreement by reason of Participant’s separation from service during a period in which the Participant is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Committee under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes):

(i) if the payment or distribution is payable in a lump sum, the Participant’s right to receive payment or distribution of such non-exempt deferred compensation will be delayed until the earlier of the Participant’s death or the first day of the seventh month following the Participant’s separation from service; and

(ii) if the payment or distribution is payable over time, the amount of such non-exempt deferred compensation that would otherwise be payable during the six-month period immediately following the Participant’s separation from service will be accumulated and the Participant’s right to receive payment or distribution of such accumulated amount will be delayed until the earlier of the Participant’s death or the first day of the seventh month following the Participant’s separation from service, whereupon the accumulated amount will be paid or distributed

to the Participant and the normal payment or distribution schedule for any remaining payments or distributions will resume.

For purposes of this Plan, the term “Specified Employee” has the meaning given such term in Section 409A and the final regulations thereunder, provided, however, that, as permitted in such final regulations, the Company’s Specified Employees and its application of the six-month delay rule of Code Section 409A(a)(2)(B)(i) shall be determined in accordance with rules adopted by the Board or any committee of the Board, which shall be applied consistently with respect to all nonqualified deferred compensation arrangements of the Company, including this Plan.

**MICRON TECHNOLOGY, INC.
1994 STOCK OPTION PLAN**

1. Purposes of the Plan. The purposes of this Stock Option Plan are:

- to attract and retain the best available personnel for positions of substantial responsibility,
- to provide additional incentive to Employees and Consultants, and
- to promote the success of the Company's business.

Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Administrator" means the Board or any of its Committees as shall be administering the Plan, in accordance with Section 4 of the Plan.

(b) "Affiliate" means (i) any subsidiary or parent company of the Company, or (ii) an entity that directly or through one or more intermediaries controls, is controlled by or is under common control with, the Company, as determined by the Committee.

(c) "Applicable Laws" means the legal requirements relating to the administration of stock option plans under Delaware corporate and securities laws and the Code.

(d) "Board" means the Board of Directors of the Company.

(e) "Change in Control" means the acquisition by any person or entity, directly, indirectly or beneficially, acting alone or in concert, of more than thirty-five percent (35%) of the Common Stock of the Company outstanding at any time.

(f) "Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific Section of the Code or regulation thereunder shall include such Section or regulation, any valid regulation promulgated under such Section, and any comparable provision of any future law, legislation or regulation amending, supplementing or superseding such Section or regulation.

(g) "Committee" means a Committee appointed by the Board in accordance with Section 4 of the Plan.

(h) "Common Stock" means the Common Stock of the Company.

(i) "Company." means Micron Technology, Inc., a Delaware corporation.

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(j) “Consultant” means any person, including an advisor, engaged by the Company or a Parent or Subsidiary to render services and who is compensated for such services. The term “Consultant” shall also include Directors who are not Employees of the Company.

(k) “Continuous Status as and Employee or Consultant” means that the employment or consulting relationship with the Company, any Parent, or Subsidiary, is not interrupted or terminated. Continuous Status as an Employee or Consultant shall not be considered interrupted in the case of (i) any leave of absence approved by the Company or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor. A leave of absence approved by the Company shall include sick leave, military leave, or any other personal leave approved by an authorized representative of the Company. For purposes of Incentive Stock Options, no such leave may exceed 90 days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, on the 91st day of such leave any Incentive Stock Option held by the Optionee shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

(l) “Director” means a member of the Board.

(m) “Disability” means total and permanent disability as defined in Section 22(e)(3) of the Code. Notwithstanding the foregoing, for any Options that constitute a nonqualified deferred compensation plan within the meaning of Section 409A(d) of the Code, “Disability” has the meaning given such term in Section 409A of the Code.

(n) “Employee” means any person, including Officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director’s fee by the Company shall be sufficient to constitute “employment” by the Company.

(o) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(p) “Fair Market Value” means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange, including without limitation the New York Stock Exchange (“NYSE”), or a national market system, the Fair Market Value of a Share of Common Stock shall be the average closing price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system (or the exchange with the greatest volume of trading in Common Stock) for the last market trading day prior to the day of determination, as reported by Bloomberg L.P. or such other source as the Administrator deems reliable;

(ii) If the Common Stock is quoted on the over-the-counter market or is regularly quoted by a recognized securities dealer, but selling prices are not reported, the Fair Market Value of a Share of Common Stock shall be the mean between the high bid and low

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asked prices for the Common Stock on the day of determination, as reported by Bloomberg, L. P. or such other source as the Administrator deems reliable;

(iii) In the absence of an established market for the Common Stock, the Fair Market Value shall be determined by such other method as the Committee determines in good faith to be reasonable and in compliance with Code Section 409A.

(q) “Incentive Stock Option” means an Option intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(r) “Nonstatutory Stock Option” means an Option not intended to qualify as an Incentive Stock Option.

(s) “Notice of Grant” means a written notice evidencing certain terms and conditions of an individual Option grant. The Notice of Grant is subject to the terms and conditions of the Option Agreement.

(t) “Officer” means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(u) “Option” means a stock option granted pursuant to the Plan.

(v) “Option Agreement” means a written agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(w) “Option Exchange Program” means a program whereby outstanding options are surrendered in exchange for options with a lower exercise price.

(x) “Optioned Stock” means the Common Stock subject to an Option.

(y) “Optionee” means an Employee or Consultant who holds an outstanding Option.

(z) “Parent” means a “parent corporation”, whether now or hereafter existing, as defined in Section 424(e) of the Code.

(aa) “Plan” means this 1994 Option Plan.

(bb) “Rule 16b-3” means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

(cc) “Share” means a share of the Common Stock, as adjusted in accordance with Section 12 of the Plan.

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(dd) “Subsidiary” means a “subsidiary corporation”, whether now or hereafter existing, as defined in Section 424(f) of the Code. In the case of an Option that is not intended to qualify as an Incentive Stock Option, the term “Subsidiary” shall also include any other entity in which the Company, or any Parent or Subsidiary of the Company has a significant ownership interest.

3. Stock Subject to the Plan. Subject to the provisions of Section 12 of the Plan, the maximum aggregate number of Shares which may be optioned and sold under the Plan is 64,000,000 Shares. The Shares may be authorized, but unissued, or reacquired Common Stock.

If an Option expires or becomes unexercisable without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated); provided, however, that Shares that have actually been issued under the Plan shall not be returned to the Plan and shall not become available for future distribution under the Plan.

4. Administration of the Plan.

(a) Procedure.

(i) Multiple Administrative Bodies. If permitted by Rule 16b-3, the Plan may be administered by different bodies with respect to Directors, Officers who are not Directors, and Employees who are neither Directors nor Officers.

(ii) Administration With Respect to Directors and Officers Subject to Section 16(b). With respect to Option grants made to Employees who are also Officers or Directors subject to Section 16(b) of the Exchange Act, the Plan shall be administered by (A) the Board, if the Board may administer the Plan in compliance with the rules governing a plan intended to qualify as a discretionary plan under Rule 16b-3, or (B) a committee designated by the Board to administer the Plan, which committee shall be constituted to comply with the rules governing a plan intended to qualify as a discretionary plan under Rule 16b-3. Once appointed, such committee shall continue to serve in its designated capacity until otherwise directed by the Board. From time to time the Board may increase the size of the Committee and appoint additional members, remove members (with or without cause) and substitute new members, fill vacancies (however caused), and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by the rules governing a plan intended to qualify as a discretionary plan under Rule 16b-3.

(iii) Administration With Respect to Other Persons. With respect to Option grants made to Employees or Consultants who are neither Directors nor Officers of the Company, the Plan shall be administered by (A) the Board or (B) a committee designated by the Board, which committee shall be constituted to satisfy Applicable Laws. Once appointed, such Board may increase the size of the Committee and appoint additional members, remove members (with or without cause) and substitute new members, fill vacancies (however caused), and

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remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

- (i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(o) of the Plan;
- (ii) to select the Consultants and Employees to whom Options may be granted hereunder;
- (iii) to determine whether and to what extent Options are granted hereunder;
- (iv) to determine the number of shares of Common Stock to be covered by each Option granted hereunder;
- (v) to approve forms of agreement for use under the Plan;
- (vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;
- (vii) to reduce the exercise price of any Option to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option shall have declined since the date the Option was granted;
- (viii) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan;
- (ix) to prescribe, amend, and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;
- (x) to modify or amend each Option (subject to Section 14(c) of the Plan), including the discretionary authority to extend the post-termination exercisability period of Options longer than is otherwise provided for in the Plan;

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(xi) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Option previously granted by the Administrator;

(xii) to institute and Option Exchange Program; and

(xiii) to make all other determinations deemed necessary or advisable for administering the Plan.

(c) Effect of Administrator's Decision. The Administrator's decisions, determinations, and interpretations shall be final and binding on all Optionees and any other holders of Options.

5. Eligibility. Nonstatutory Stock Options may be granted to Employees and Consultants. Incentive Stock Options may be granted only to Employees. If otherwise eligible, an Employee or Consultant who has been granted an Option may be granted additional Options. Employees and Consultants who are service providers to an Affiliate may be granted Options under this Plan only if the Affiliate qualifies as an "eligible issuer of service recipient stock" within the meaning of §1.409A-1(b)(5)(iii)(E) of the final regulations under Code Section 409A.

6. Limitations.

(a) Each Option shall be designated in the Notice of Grant as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designations, to the extent that the aggregate Fair Market Value:

(i) of Shares subject to an Optionee's Incentive Stock Options granted by the Company or any Parent or Subsidiary, which

(ii) become exercisable for the first time during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds \$100,000, such excess Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares shall be determined as of the time of grant.

(b) Neither the Plan nor any Option shall confer upon an Optionee any right with respect to continuing the Optionee's employment or consulting relationship with the Company, nor shall they interfere in any way with the Optionee's right or the Company's right to terminate such employment or consulting relationship at any time, with or without cause.

(c) The following limitations shall apply to grants of Options to Employees:

(i) No employee shall be granted, in any fiscal year of the Company, Options to purchase more than 500,000 Shares.

(ii) The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization as described in Section 12.

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(iii) If an Option is canceled in the same fiscal year of the Company in which it was granted (other than in connection with a transaction described in Section 12), the canceled Option will be counted against the limit set forth in Section 6(c)(i). For this purpose, if the exercise price of an Option is reduced, the transaction will be treated as a cancellation of the Option and the grant of a new Option.

7. Term of Plan. Subject to Section 18 of the Plan, the Plan shall become effective upon the earlier to occur of its adoption by the Board or its approval by the shareholders of the Company as described in Section 18 of the Plan. It shall continue in effect for a term of ten (10) years unless terminated earlier under Section 14 of the Plan.

8. Term of Option. The term of each Option shall be stated in the Notice of Grant; provided, however, that in the case of an Incentive Stock Option, the term shall be ten (10) years from the date of grant or such shorter term as may be provided in the Notice of Grant. Moreover, in the case of an Incentive Stock Option granted to an Optionee who, at the time Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option shall be five (5) years from the date of grant or such shorter term as may be provided in the Notice of Grant.

9. Option Exercise Price and Consideration.

(a) Exercise Price. The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, subject to the following:

(i) In the case of an Incentive Stock Option

(A) granted to an Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or Parent or Subsidiary, the per Share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(B) granted to any Employee other than an Employee described in paragraph (A) immediately above, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(ii) In the case of a Nonstatutory Stock Option, the per Share exercise price shall be no less than 100% of the Fair Market Value per Share on the date of grant.

(b) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions which must be satisfied before the Option may be exercised. In doing so, the

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Administrator may specify that an Option may not be exercised until the completion of a service period.

(c) Form of Consideration. The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. In the case of an Incentive Stock Option, the Administrator shall determine the acceptable form of consideration at the time of grant. Such consideration may consist entirely of:

- (i) cash;
- (ii) check;
- (iii) promissory note;
- (iv) other Shares which have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised;
- (v) delivery of a properly executed exercise notice together with such other documentation as the Administrator and the broker, if applicable, shall require to effect an exercise of the Option and delivery to the Company of the sale or loan proceeds required to pay the exercise price;
- (vi) a reduction in the amount of any Company liability to the Optionee, other than any liability attributable to the Optionee's participation in any Company-sponsored deferred compensation program or arrangement;
- (vii) any combination of the foregoing methods of payment; or
- (viii) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

10. Exercise of Option.

(a) Procedure for Exercise; Rights as a Shareholder. Any Option granted thereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement.

An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when the Company receives: (i) written notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the

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Optionee, in the name of the Optionee and his or her spouse. Until the stock certificate evidencing such Shares is issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate, either in book entry form or in certificate form, promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 12 of the Plan.

Exercising an Option in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Employment or Consulting Relationship. Upon termination of an Optionee's Continuous Status as an Employee or Consultant, other than upon the Optionee's death or Disability, the Optionee may exercise his or her Option, but only within such period of time as is specified in the Notice of Grant, and only to the extent that the Optionee was entitled to exercise it as the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). In the absence of a specified time in the Notice of Grant, the Option shall remain exercisable for 30 days following the Optionee's termination of Continuous Status as an Employee or Consultant. In the case of an Incentive Stock Option, such period of time shall not exceed thirty (30) days from the date of termination. If, at the date of termination, the Optionee is not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee. In the event that an Optionee's Continuous Status as an Employee or Consultant terminates as a result of the Optionee's Disability, the Optionee may exercise his or her Option at any time within twelve (12) months from the date of such termination, but only to the extent that the Optionee was entitled to exercise it at the date of such termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). If, at the date of termination, the Optionee does not exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee. In the event of the death of an Optionee, the Option may be exercised at any time within twelve (12) months following the date of death (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant), by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent that the Optionee was entitled to exercise the Option at the date of death. If, at any time of death, the Optionee was not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall immediately revert to the Plan. If, after death, the Optionee's estate or a person who acquired the right to exercise the

Option by bequest or inheritance does not exercise the Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(e) Rule 16b-3. Options granted to individuals subject to Section 16 of the Exchange Act (“Insiders”) must comply with the applicable provisions of Rule 16b-3 and shall contain such additional conditions or restrictions as may be required thereunder to qualify for the maximum exemption from Section 16 of the Exchange Act with respect to Plan transactions.

(f) Suspension. Any Optionee who is also a participant in the Retirement at Micron (“RAM”) Section 401(k) Plan and who requests and receives a hardship distribution from the RAM Plan, is prohibited from making, and must suspend, his or her employee elective contributions and employee contributions including, without limitation on the foregoing, the exercise of any Option granted from the date of receipt by that employee of the RAM hardship distribution.

11. Non-Transferability of Options. An Option may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee.

12. Adjustments Upon Changes in Capitalization, Dissolution, Merger, or Asset Sale.

(a) Changes in Capitalization.

Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each outstanding Option, and the number of issued shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option, as well as the price per share of Common Stock covered by each such outstanding Option, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock or any other increase or decrease in the number of shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been “effected without receipt of consideration.” Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding, and conclusive. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in Shares, or a combination or consolidation of the outstanding Stock into a lesser number of Shares, the authorization limits under Section 3 and 6(c) shall automatically be adjusted proportionately, and the Shares then subject to each Award shall automatically be adjusted proportionately without any change in the aggregate purchase price therefor. To the extent that any adjustments made pursuant to this Section 12 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options..

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(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, to the extent that an Option has not been previously exercised, it will terminate immediately prior to the consummation of such proposed action. The Board may, in the exercise of its sole discretion in such instances, declare that any Option shall terminate as of a date fixed by the Board and give each Optionee the right to exercise his or her Option as to all or any part of the Optioned stock, including Shares as to which the Option would not otherwise be exercisable.

(c) Merger or Asset Sale.

Upon the occurrence or in anticipation of any corporate event or transaction involving the Company (including, without limitation, any merger, reorganization, recapitalization or combination or exchange of shares or any transaction described in Section 12(a)), the Administrator may, in its sole discretion, provide (i) that Options will be settled in cash rather than Common Stock, (ii) that Options will become immediately vested and exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that Options will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, (iv) that outstanding Options may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Common Stock, as of a specified date associated with the transaction, over the exercise price of the Option, or (v) any combination of the foregoing. The Administrator's determination need not be uniform and may be different for different Optionees whether or not such Optionees are similarly situated.

(d) Change in Control. In the event of a Change in Control, the unexercised portion of the Option shall become immediately exercisable, to the extent such acceleration does not disqualify the Plan, or cause an Incentive Stock Option to be treated as a Nonstatutory Stock Option without the consent of the Optionee.

(e) General. Any discretionary adjustments made pursuant to this Section 12 shall be subject to the provisions of Section 14.

13. Date of Grant. The date of grant of an Option shall be, for all purposes, the date on which the Administrator makes the determination granting such Option, or such other later date as is determined by the Administrator. Notice of the determination shall be provided to each Optionee within a reasonable time after the date of such grant.

14. Amendment and Termination of the Plan.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend, or terminate the Plan.

(b) Shareholder Approval. The Company shall obtain shareholder approval of any Plan amendment to the extent necessary and desirable to comply with Rule 16b-3 or with Section 422 of the Code (or any successor rule or statute or other applicable law, rule, or

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regulation, including the requirements of any exchange or quotation system on which the Common Stock is listed or quoted). Such shareholder approval, if required, shall be obtained in such a manner and to such a degree as is required by the applicable law, rule, or regulation.

(c) Effect of Amendment or Termination. No amendment, alteration, suspension, or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company.

(d) Compliance Amendments. Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, the Committee may amend the Plan or any Notice of Grant, Option Agreement or other applicable agreement, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan, Notice of Grant, Option Agreement or other applicable agreement to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder. By accepting an Option under this Plan, a Optionee agrees to any amendment made pursuant to this Section to any Option granted under the Plan without further consideration or action.

15. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, Applicable Laws, and the requirements of any stock exchange or quotation system upon which the Shares may then be listed or quoted, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

16. Liability of Company.

(a) Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

(b) Grants Exceeding Allotted Shares. If the Optioned Stock covered by an Option exceeds, as of the date of grant, the number of Shares which may be issued under the Plan

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without additional shareholder approval, such Option shall be void with respect to such excess Optioned Stock, unless shareholder approval of an amendment sufficiently increasing the number of shares subject to the Plan is timely obtained in accordance with Section 14(b) of the Plan.

17. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

18. Shareholder Approval. Continuance of the Plan shall be subject to approval by the shareholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such shareholder approval shall be obtained in the manner and to the degree required under applicable federal and Delaware law.

19. Special Provisions Related To Section 409A of the Code.

(a) Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, to the extent that any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under the Plan or any Notice of Grant, Option Agreement or other applicable agreement by reason of the occurrence of a Change in Control, or the Optionee’s Disability or separation from service, such amount or benefit will not be payable or distributable to the Optionee by reason of such circumstance unless (i) the circumstances giving rise to such Change in Control, Disability or separation from service meet any description or definition of “change in control event”, “disability” or “separation from service”, as the case may be, in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. This provision does not prohibit the vesting of any Option upon a Change in Control, Disability or separation from service, however defined. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the next earliest payment or distribution date or event specified in the Notice of Grant, Option Agreement or other applicable agreement that is permissible under Section 409A.

(b) If any one or more Options granted under the Plan to a Optionee could qualify for any separation pay exemption described in Treas. Reg. Section 1.409A-1(b)(9), but such Options in the aggregate exceed the dollar limit permitted for the separation pay exemptions, the Company (acting through the Committee or the Head of Human Resources) shall determine which Options or portions thereof will be subject to such exemptions.

(c) Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, if any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under this Plan or in any Notice of Grant, Option Agreement or other applicable agreement by reason of a Optionee’s separation from service during a period in which the Optionee is a Specified Employee (as defined below), then, subject

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to any permissible acceleration of payment by the Committee under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes):

(i) if the payment or distribution is payable in a lump sum, the Optionee's right to receive payment or distribution of such non-exempt deferred compensation will be delayed until the earlier of the Optionee's death or the first day of the seventh month following the Optionee's separation from service; and

(ii) if the payment or distribution is payable over time, the amount of such non-exempt deferred compensation that would otherwise be payable during the six-month period immediately following the Optionee's separation from service will be accumulated and the Optionee's right to receive payment or distribution of such accumulated amount will be delayed until the earlier of the Optionee's death or the first day of the seventh month following the Optionee's separation from service, whereupon the accumulated amount will be paid or distributed to the Optionee and the normal payment or distribution schedule for any remaining payments or distributions will resume.

For purposes of this Plan, the term "Specified Employee" has the meaning given such term in Code Section 409A and the final regulations thereunder, provided, however, that, as permitted in such final regulations, the Company's Specified Employees and its application of the six-month delay rule of Code Section 409A(a)(2)(B)(i) shall be determined in accordance with rules adopted by the Board or any committee of the Board, which shall be applied consistently with respect to all nonqualified deferred compensation arrangements of the Company, including this Plan.

Revised 12/11/2008 (409A amendments)

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MICRON TECHNOLOGY, INC.
1997 NONSTATUTORY STOCK OPTION PLAN

1. Purposes of the Plan. The purposes of this Plan are:

- to attract and retain the best available personnel for positions of substantial responsibility,
- to provide additional incentive to Employees and Consultants, and
- to promote the success of the Company's business.

Nonstatutory stock options may be granted under the Plan.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Administrator" means the Board or any of its Committees as shall be administering the Plan, in accordance with Section 4 of the Plan.

(b) "Affiliate" means (i) any subsidiary or parent company of the Company, or (ii) an entity that directly or through one or more intermediaries controls, is controlled by or is under common control with, the Company, as determined by the Committee.

(c) "Applicable Laws" means the legal requirements relating to the administration of stock option plans and the issuance of stock and stock options under federal securities laws, Delaware corporate and securities laws, the Code, and the applicable laws of any foreign country or jurisdiction where options will be or are being granted under the Plan.

(d) "Board" means the Board of Directors of the Company.

(e) "Change in Control" means the acquisition by any person or entity, directly, indirectly or beneficially, acting alone or in concert, of more than thirty-five percent (35%) of the Common Stock of the Company outstanding at any time.

(f) "Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific Section of the Code or regulation thereunder shall include such Section or regulation, any valid regulation promulgated under such Section, and any comparable provision of any future law, legislation or regulation amending, supplementing or superseding such Section or regulation.

(g) "Committee" means a Committee appointed by the Board in accordance with Section 4 of the Plan.

(h) "Common Stock" means the Common Stock of the Company.

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(i) “Company” means Micron Technology, Inc., a Delaware corporation.

(j) “Consultant” means any person, including an advisor, engaged by the Company or a parent, subsidiary or Affiliate to render services. The term “Consultant” shall not include any person who is also an Officer or Director of the Company.

(k) “Continuous Status as an Employee or Consultant” means that the employment or consulting relationship with the Company, any parent, subsidiary, or Affiliate, is not interrupted or terminated. Continuous Status as an Employee or Consultant shall not be considered interrupted in the case of (i) any leave of absence approved by the Company, (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor or (iii) change in status from either an Employee to a Consultant or a Consultant to an Employee. A leave of absence approved by the Company shall include sick leave, military leave, or any other personal leave approved by an authorized representative of the Company.

(l) “Director” means a member of the Board.

(m) “Disability” means total and permanent disability as defined in Section 22(e)(3) of the Code. Notwithstanding the foregoing, for any Options that constitute a nonqualified deferred compensation plan within the meaning of Section 409A(d) of the Code, “Disability” has the meaning given such term in Section 409A of the Code.

(n) “Employee” means any person, except Officers and Directors, employed by the Company or any parent, subsidiary or Affiliate of the Company.

(o) “Fair Market Value” of the Stock, on any date, means: (i) if the Stock is listed or traded on any Exchange, the average closing price for such Stock (or the closing bid, if no sales were reported) as quoted on such Exchange (or, if more than one Exchange, the Exchange with the greatest volume of trading in the Stock) for such date, or if no sales or bids were reported for such date, on the last market trading day prior to the day of determination, as reported by *Market Sweep*, a service from Interactive Data Services, Inc., or such other source as the Committee deems reliable; (ii) if the Stock is quoted on the over-the-counter market or is regularly quoted by a recognized securities dealer, but selling prices are not reported, the Fair Market Value of the Stock shall be the mean between the high bid and low asked prices for the Stock on such date, or if no sales or bids were reported for such date, on the last market trading day prior to the day of determination, as reported by *Market Sweep*, a service from Interactive Data Services, Inc., or such other source as the Committee deems reliable, or (iii) in the absence of an established market for the Stock, the Fair Market Value shall be determined by such other method as the Committee determines in good faith to be reasonable and in compliance with Code Section 409A.

(p) “Notice of Grant” means a written notice evidencing certain terms and conditions of an individual Option grant. The Notice of Grant is subject to the terms and conditions of the Option Agreement.

(q) “Officer” means a person who is an officer of the Company within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(r) “Option” means a nonstatutory stock option granted pursuant to the Plan. Such option is not intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(s) “Option Agreement” means a written agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(t) “Option Exchange Program” means a program whereby outstanding options are surrendered in exchange for options with a lower exercise price.

(u) “Optioned Stock” means the Common Stock subject to an Option.

(v) “Optionee” means an Employee or Consultant who holds an outstanding Option.

(w) “Plan” means this Nonstatutory Stock Option Plan.

(x) “Share” means a share of the Common Stock, as adjusted in accordance with Section 12 of the Plan.

3. Stock Subject to the Plan. Subject to the provisions of Section 12 of the Plan, the maximum aggregate number of Shares which may be optioned and sold under the Plan is 800,000. The Shares may be authorized, but unissued, or reacquired Common Stock.

If an Option expires or becomes unexercisable without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated).

4. Administration of the Plan.

(a) Procedure. The Plan shall be administered by (A) the Board or (B) a committee designated by the Board, which committee shall be constituted to satisfy Applicable Laws. Once appointed, such Board may increase the size of the Committee and appoint additional members, remove members (with or without cause) and substitute new members, fill vacancies (however caused), and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

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- granted hereunder;
- (i) to determine the Fair Market Value of the Common Stock;
 - (ii) to select the Consultants and Employees to whom Options may be
 - (iii) to determine whether and to what extent Options are granted hereunder;
 - (iv) to determine the number of shares of Common Stock to be covered by each Option granted hereunder;
 - (v) to approve forms of agreement for use under the Plan;
 - (vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;
 - (vii) to reduce the exercise price of any Option to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option shall have declined since the date the Option was granted;
 - (viii) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan;
 - (ix) to prescribe, amend, and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;
 - (x) to modify or amend each Option (subject to Section 14(b) of the Plan), including the discretionary authority to extend the post-termination exercisability period of Options longer than is otherwise provided for in the Plan;
 - (xi) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Option previously granted by the Administrator;
 - (xii) to institute an Option Exchange Program;
 - (xiii) to allow Optionees to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option that number of Shares having a Fair Market Value equal to the amount required to be withheld; and
 - (xiv) to make all other determinations deemed necessary or advisable for administering the Plan.

(c) Effect of Administrator's Decision. The Administrator's decisions, determinations, and interpretations shall be final and binding on all Optionees and any other holders of Options.

5. Eligibility. Options may be granted to Employees and Consultants. Employees and Consultants who are service providers to an Affiliate may be granted Options under this Plan only if the Affiliate qualifies as an "eligible issuer of service recipient stock" within the meaning of §1.409A-1(b)(5)(iii)(E) of the final regulations under Code Section 409A.

6. Limitations. Neither the Plan nor any Option shall confer upon an Optionee any right with respect to continuing the Optionee's employment or consulting relationship with the Company, nor shall they interfere in any way with the Optionee's right or the Company's right to terminate such employment or consulting relationship at any time, with or without cause.

7. Term of Plan. The Plan shall become effective upon its adoption by the Board. It shall continue in effect until terminated under Section 14 of the Plan.

8. Term of Option. The term of each Option shall be stated in the Notice of Grant.

9. Option Exercise Price and Consideration.

(a) Exercise Price. The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, but shall not be less than the Fair Market Value per share on the date of grant of the Option.

(b) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions which must be satisfied before the Option may be exercised. In doing so, the Administrator may specify that an Option may not be exercised until either the completion of a service period or the achievement of performance criteria with respect to the Company or the Optionee.

(c) Form of Consideration. The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. Such consideration may consist entirely of:

(i) cash;

(ii) check;

(iii) promissory note;

(iv) other Shares which have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised;

(v) delivery of a properly executed exercise notice together with such other documentation as the Administrator and the broker, if applicable, shall require to effect an exercise of the Option and delivery to the Company of the sale or loan proceeds required to pay the exercise price;

(vi) a reduction in the amount of any Company liability to the Optionee, other than any liability attributable to the Optionee's participation in any Company-sponsored deferred compensation program or arrangement;

(vii) any combination of the foregoing methods of payment; or

(viii) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

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10. Exercise of Option.

(a) Procedure for Exercise; Rights as a Shareholder. Any Option granted thereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement.

An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when the Company receives: (i) written notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such Shares, promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 12 of the Plan.

Exercising an Option in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Employment or Consulting Relationship. Upon termination of an Optionee's Continuous Status as an Employee or Consultant, other than upon the Optionee's death or Disability, the Optionee may exercise his or her Option, but only within such period of time as is specified in the Notice of Grant, and only to the extent that the Optionee was entitled to exercise it as the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). In the absence of a specified time in the Notice of Grant, the Option shall remain exercisable for 30 days following the Optionee's termination of Continuous Status as an Employee or Consultant. If, at the date of termination, the Optionee is not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee. In the event that an Optionee's Continuous Status as an Employee or Consultant terminates as a result of the Optionee's Disability, the Optionee may exercise his or her Option at any time within twelve (12) months from the date of such termination, but only to the extent that the Optionee was entitled to exercise it at the date of such termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). If, at the date of termination, the Optionee does not exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not

exercise his or her option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee. In the event of the death of an Optionee, the Option may be exercised at any time within twelve (12) months following the date of death (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant), by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent that the Optionee was entitled to exercise the Option at the date of death. If, at any time of death, the Optionee was not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall immediately revert to the Plan. If, after death, the Optionee's estate or a person who acquired the right to exercise the Option by bequest or inheritance does not exercise the Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(e) Suspension. Any Optionee who is also a participant in the Retirement at Micron ("RAM") Section 401(k) Plan and who requests and receives a hardship distribution from the RAM Plan, is prohibited from making, and must suspend, his or her employee elective contributions and employee contributions including, without limitation on the foregoing, the exercise of any Option granted from the date of receipt by that employee of the RAM hardship distribution.

11. Non-Transferability of Options. Unless otherwise specified by the Administrator in the Option Agreement, an Option may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee.

12. Adjustments Upon Changes in Capitalization, Dissolution, Merger, or Asset Sale.

(a) Changes in Capitalization.

Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each outstanding Option, and the number of issued shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option, as well as the price per share of Common Stock covered by each such outstanding Option, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock or any other increase or decrease in the number of shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been effected without receipt of consideration. Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding, and conclusive. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in Shares, or a combination or consolidation of the outstanding Stock into a lesser number of Shares, the authorization limits under Section 3 shall automatically be adjusted proportionately, and the Shares then subject to each Award shall automatically be adjusted proportionately without any change in the aggregate purchase price therefor. To the extent that any adjustments made

pursuant to this Section 12 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, to the extent that an Option has not been previously exercised, it will terminate immediately prior to the consummation of such proposed action. The Board may, in the exercise of its sole discretion in such instances, declare that any Option shall terminate as of a date fixed by the Board and give each Optionee the right to exercise his or her Option as to all or any part of the Optioned stock, including Shares as to which the Option would not otherwise be exercisable.

(c) Merger or Asset Sale.

Upon the occurrence or in anticipation of any corporate event or transaction involving the Company (including, without limitation, any merger, reorganization, recapitalization or combination or exchange of shares or any transaction described in Section 12(a)), the Administrator may, in its sole discretion, provide (i) that Options will be settled in cash rather than Common Stock, (ii) that Options will become immediately vested and exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that Options will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, (iv) that outstanding Options may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Common Stock, as of a specified date associated with the transaction, over the exercise price of the Option, or (v) any combination of the foregoing. The Administrator's determination need not be uniform and may be different for different Optionees whether or not such Optionees are similarly situated.

(d) Change in Control. In the event of a Change in Control, the unexercised portion of the Option shall become immediately exercisable.

(e) General. Any discretionary adjustments made pursuant to this Section 12 shall be subject to the provisions of Section 14.

13. Date of Grant. The date of grant of an Option shall be, for all purposes, the date on which the Administrator makes the determination granting such Option, or such other later date as is determined by the Administrator. Notice of the determination shall be provided to each Optionee within a reasonable time after the date of such grant.

14. Amendment and Termination of the Plan.

(a) Amendment and Termination. Except as provided herein, the Board may at any time amend, alter, suspend, or terminate the Plan without shareholder approval; provided, however, that the Board may condition any amendment or modification on the approval of shareholders of the Company if such approval is necessary or deemed advisable with respect to tax, securities or other applicable laws, policies or regulations. No termination can affect options previously granted, nor may an amendment make any change in any option theretofore granted which adversely affects the rights of any Optionee, nor

may an amendment be made without prior approval of the shareholders of the Company if such amendment would:

- (i) increase the number of shares that may be issued under the Plan;
- (ii) change the designation of the employees (or class of employees) eligible for participation in the Plan; or
- (iii) materially increase the benefits which may accrue to participants under the Plan.

(b) Effect of Amendment or Termination. No amendment, alteration, suspension, or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company.

(c) Compliance Amendments. Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, the Committee may amend the Plan or any Notice of Grant, Option Agreement or other applicable agreement, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan, Notice of Grant, Option Agreement or other applicable agreement to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder. By accepting an Option under this Plan, a Optionee agrees to any amendment made pursuant to this Section to any Option granted under the Plan without further consideration or action.

15. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares shall comply with all Applicable Laws and the requirements of any stock exchange or quotation system upon which the Shares may then be listed or quoted, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

16. Liability of Company. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

17. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

18. Restriction on Repricing. Without the prior approval of the shareholders of the Company, the Administrator shall not reprice any Options issued under the Plan through cancellation and regrant, by lowering the exercise price, or by any other means.

19. Special Provisions Related To Section 409A of the Code.

(a) Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, to the extent that any amount or benefit that would constitute non-exempt "deferred compensation" for purposes of Section 409A of the Code would otherwise be payable or distributable under the Plan or any Notice of Grant, Option Agreement or other applicable agreement by reason of the occurrence of a Change in Control, or the Optionee's Disability or separation from service, such amount or benefit will not be payable or distributable to the Optionee by reason of such circumstance unless (i) the circumstances giving rise to such Change in Control, Disability or separation from service meet any description or definition of "change in control event", "disability" or "separation from service", as the case may be, in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. This provision does not prohibit the *vesting* of any Option upon a Change in Control, Disability or separation from service, however defined. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the next earliest payment or distribution date or event specified in the Notice of Grant, Option Agreement or other applicable agreement that is permissible under Section 409A.

(b) If any one or more Options granted under the Plan to a Optionee could qualify for any separation pay exemption described in Treas. Reg. Section 1.409A-1(b)(9), but such Options in the aggregate exceed the dollar limit permitted for the separation pay exemptions, the Company (acting through the Committee or the Head of Human Resources) shall determine which Options or portions thereof will be subject to such exemptions.

(c) Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, if any amount or benefit that would constitute non-exempt "deferred compensation" for purposes of Section 409A of the Code would otherwise be payable or distributable under this Plan or in any Notice of Grant, Option Agreement or other applicable agreement by reason of a Optionee's separation from service during a period in which the Optionee is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Committee under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes):

(i) if the payment or distribution is payable in a lump sum, the Optionee's right to receive payment or distribution of such non-exempt deferred compensation will be delayed until the earlier of the Optionee's death or the first day of the seventh month following the Optionee's separation from service; and

(ii) if the payment or distribution is payable over time, the amount of such non-exempt deferred compensation that would otherwise be payable during the six-month period immediately following the Optionee's separation from service will be accumulated and the Optionee's right to receive payment or distribution of such accumulated amount will be delayed until the earlier of the Optionee's death or the first day of the seventh month following the Optionee's separation from service, whereupon the accumulated amount will be paid or distributed to the Optionee and the normal payment or distribution schedule for any remaining payments or distributions will resume.

For purposes of this Plan, the term “Specified Employee” has the meaning given such term in Code Section 409A and the final regulations thereunder, *provided, however*, that, as permitted in such final regulations, the Company’s Specified Employees and its application of the six-month delay rule of Code Section 409A(a)(2)(B)(i) shall be determined in accordance with rules adopted by the Board or any committee of the Board, which shall be applied consistently with respect to all nonqualified deferred compensation arrangements of the Company, including this Plan.

9/22/2003 change #2(n0

MICRON TECHNOLOGY, INC.
AMENDED AND RESTATED
1998 NON-EMPLOYEE DIRECTOR STOCK INCENTIVE PLAN

1. Purpose. The purpose of the Micron Technology, Inc. 1998 Non-Employee Director Stock Incentive Plan is to attract, retain and compensate highly-qualified individuals who are not employees of Micron Technology, Inc. or any of its subsidiaries or affiliates for service as members of the Board by providing them with an ownership interest in the Common Stock of the Company. The Company intends that the Plan will benefit the Company and its stockholders by allowing Non-Employee Directors to have a personal financial stake in the Company through an ownership interest in the Common Stock and will closely associate the interests of Non-Employee Directors with that of the Company's stockholders.

2. Defined Terms. Unless the context clearly indicates otherwise, the following terms shall have the following meanings:

"Board" means the Board of Directors of the Company.

"Change in Control" means "change of control" or "change in effective control" of the Company, or "change in the ownership of a substantial portion of the assets" of the Company as described or defined in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition).

"Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific Section of the Code or regulation thereunder shall include such Section or regulation, any valid regulation promulgated under such Section, and any comparable provision of any future law, legislation or regulation amending, supplementing or superseding such Section or regulation.

"Company" means Micron Technology, Inc.

"Committee" has the meaning assigned such term in Section 3.

"Common Stock" means the common stock, par value \$0.10 per share, of the Company.

"Deferral Period" has the meaning set forth in Section 6(e) of the Plan.

"Deferred Stock Rights" means the right to receive shares of Common Stock upon Separation from Services, as described in Section 6(e) of the Plan.

"Dividend" has the meaning set forth in Section 6(e) of the Plan.

"Election Form" means a form approved by the Committee pursuant to which a Non-Employee Director elects a form of payment of his or her Retainer, as provided in Section 6(a).

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

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"Fair Market Value," means, as of any date, the value of Common Stock determined as follows:

(a) If the Common Stock is listed on any established stock exchange, including without limitation the New York Stock Exchange ("NYSE"), or a national market system, the Fair Market Value of a Share of Common Stock shall be the average closing price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system (or the exchange with the greatest volume of trading in Common Stock) for the last market trading day prior to the day of determination, as reported by Bloomberg L.P. or such other source as the Administrator deems reliable; or

(b) If the Common Stock is quoted on the over-the-counter market or is regularly quoted by a recognized securities dealer, but selling prices are not reported, the Fair Market Value of a Share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the last market trading day prior to the day of determination, as reported by Bloomberg L.P. or such other source as the Administrator deems reliable; or

(c) in the absence of an established market for the Common Stock, the Fair Market Value shall be determined by such other method as the Committee determines in good faith to be reasonable and in compliance with Code Section 409A..

"Non-Employee Director" means a director of the Company who is not an employee of the Company or of any of its subsidiaries or affiliates.

"Participant" means any Non-Employee Director who is participating in the Plan.

"Plan" means the Micron Technology, Inc. 1998 Non-Employee Director Stock Incentive Plan, as amended from time to time.

"Plan Administrator" means the person or persons designated by the Committee to administer the Plan in accordance with Section 3 of the Plan. If no such administrator is designated, the Plan Administrator shall be the Committee or the Board, as the case may be, administering the Plan pursuant to Section 3.

"Plan Year" means the twelve-month period ending on December 31 of each year which, for purposes of the Plan, is the period for which Retainer is earned.

"Quarterly Grant Date" has the meaning set forth in Section 6(c) of the Plan.

"Quarterly Service Period" has the meaning set forth in Section 6(c) of the Plan.

"Retainer" means the compensation payable by the Company to a Non-Employee Director for service as a director (and, if applicable, as the member of a committee of the Board) of the Company, as such amount may be changed from time to time.

"Rule 16b-3" means Rule 16b-3, as amended from time to time, of the Securities and Exchange Commission as promulgated under the Exchange Act.

"Securities Act" means the Securities Act of 1933, as amended.

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"Separation from Service" means the good faith and complete termination of the Non-Employee Director's services to the Company without anticipation of the renewal of services.

"Shares" means shares of Common Stock.

"Stock Equivalent Amount" means the portion (in 25% increments) of a Non-Employee Director's Retainer for a Plan Year that he or she has elected to receive in the form of Common Stock or Deferred Stock Rights.

"Unforeseeable Emergency" has the meaning set forth in Section 6(f) of the Plan.

3. Administration. The Plan shall be administered by the Compensation Committee of the Board of Directors (the "Committee"). Subject to the provisions of the Plan, the Committee shall be authorized to interpret the Plan, to establish, amend and rescind any rules and regulations relating to the Plan, and to make all other determinations necessary or advisable for the administration of the Plan; provided, however, that the Committee shall have no discretion with respect to the eligibility or selection of Non-Employee Directors to receive awards under the Plan, the number of Shares subject to any such awards or the time at which any such awards are to be granted. The Committee's interpretation of the Plan, and all actions taken and determinations made by the Committee pursuant to the powers vested in it hereunder, shall be conclusive and binding upon all parties concerned including the Company, its stockholders and persons granted awards under the Plan. The Committee may appoint a plan administrator to carry out the ministerial functions of the Plan, but the administrator shall have no other authority or powers of the Committee. Notwithstanding the foregoing, the Board shall exercise any and all rights, duties and powers of the Committee under the Plan to the extent required by the applicable exemptive conditions of Rule 16b-3, as determined by the Board its sole discretion.

4. Shares Subject to Plan. The Shares issued under the Plan shall not exceed in the aggregate 250,000 shares of Common Stock. Such Shares may be authorized and unissued shares or treasury shares.

5. Participants. All active Non-Employee Directors shall be eligible to participate in the Plan.

6. Form of Payment of Retainer.

(a) Annual and Initial Elections. On or before November 30 of each year (December 31, 1998 in the case of the first Plan Year), each Non-Employee Director shall file with the Plan Administrator an election form prescribed by the Plan Administrator (the "Election Form"), in which such Non-Employee Director shall indicate his or her preference to receive some or all of his or her Retainer for the following Plan Year in the form of (i) cash, (ii) Common Stock, or (iii) Deferred Stock Rights. Such elections shall be made in increments of 25% of the Retainer. Individuals who are nominated to become Non-Employee Directors may make such election no later than 30 days after the date the Non-Employee Director first becomes eligible to participate in the Plan. If a Non-Employee Director fails to timely file an Election Form for a Plan Year, then 100% of his or her Retainer for such Plan Year will be paid in cash. If a Non-Employee Director makes an election for any Plan Year and does not revoke such election before the beginning of any subsequent Plan Year, such election shall remain in effect for each such subsequent Plan Year and shall be irrevocable through the end of such subsequent Plan Year.

- (b) Cash Payments. That portion of the Retainer to be paid in cash will be paid monthly for services rendered during the preceding month.
- (c) Grant Dates and Formula for Stock Grants. To the extent that a Non-Employee Director has elected to receive some or all of his or her Retainer in the form of Common Stock and has not elected to defer receipt of such shares pursuant to Section 6(e), shares of Common Stock shall be automatically granted to such Non-Employee Director on March 31, June 30, September 30 and December 31 of each Plan Year (each such date is hereinafter referred to as a "Quarterly Grant Date"). The total number of Shares included in each grant under this Section 6(c) shall be determined by (i) dividing the Stock Equivalent Amount earned by the Non-Employee Director during the three-month period immediately preceding the Quarterly Grant Date (the "Quarterly Service Period") by the Fair Market Value per Share on the Quarterly Grant Date, and (ii) and subtracting any Shares to be deferred pursuant to Section 6(e). Fractions will be rounded to the next highest Share.
- (d) Separation from Service During Quarterly Service Period. In the event of Separation from ServiceSeparation from Service on the Board by any Participant during a Quarterly Service Period, such Participant's award for the Quarterly Service Period shall be determined in accordance with Sections 6(b) based upon the Stock Equivalent Amount earned during such Quarterly Service Period through the date of Separation from Service, provided, that the grant date shall be the date of Separation from Service unless the grant has been deferred pursuant to Section 6(e).
- (e) Deferred Stock Rights.
- (i) Election to Defer. Each Participant will have the right to elect, in his or her Election Form delivered to the Plan Administrator prior to the commencement of each Plan Year, to defer until after the Participant's Separation from Service the grant of the Shares that would otherwise be granted to the Participant during the next ensuing Plan Year ("Deferred Stock Rights"). Pursuant to this Election Form, the Participant will elect whether all of the deferred grant for the applicable Plan Year will be (a) granted within 30 days after Separation from Service or (b) granted in approximately equal annual installments of Shares over a period of two to five years (as the Participant may elect) after the Separation from Service, each such annual grant to be made within 30 days after the anniversary of the Separation from Service. The deferral Election Form signed by the Participant prior to the Plan Year will be irrevocable except in case of an Unforeseeable Emergency (as defined in Section 6(f)). No Shares will be issued until the grant date(s) so deferred (the "Deferred Grant Date") at which time the Company agrees to issue the Shares to the Participant. The Participant will have no rights as a stockholder with respect to the Deferred Stock Rights, and the Deferred Stock Rights will be unsecured.
- (ii) Deferred Dividend Account. If any cash dividends ("Dividends") are distributed to holders of Common Stock during the period from the applicable Quarterly Grant Date until the Deferred Grant Date (the "Deferral Period") but prior to the Participant's Separation from Service, an amount equal to the cash value of such Dividends on their distribution date, as such value is determined by the Committee, will be credited to a deferred dividend account for the Participant as follows: the account will be credited with the right to receive Shares having a Fair Market Value as of the date of the Dividend equal to the cash value of the Dividend. The Company will issue Shares equal to the cumulative total of rights to Shares in such account within 30 days after the Participant's Separation from Service.

If a Dividend is distributed to holders of Common Stock after the Participant's Separation from Service but prior to the issuance in full of the deferred Shares, an amount equal to the cash value of such Dividends pertaining to any Shares still deferred shall be converted into Shares equivalent in value to the Dividend (based on the Fair Market Value as of the date of distribution of the Dividend) and such Shares will be issued to the Participant within 30 days after the date of the distribution of the Dividend. No right or interest in the Deferred Stock Rights or in the deferred dividend account shall be subject to liability for the debts, contracts or engagements of the Participant or shall be subject to disposition by transfer, alienation, anticipation, pledge, encumbrance, assignment or any other means whether such disposition be voluntary or involuntary or by operation of law by judgment, levy, attachment, garnishment or any other legal or equitable proceedings (including bankruptcy), and any attempted disposition thereof shall be null and void and of no effect; provided, however, that nothing in this Section 6(e) shall prevent transfers by will or by the applicable laws of descent and distribution. The Committee will have the right to adopt other regulations and procedures to govern deferral of grants of Shares.

(f) Unforeseeable Emergency. For purposes of this Plan, an “unforeseeable emergency” means a severe financial hardship to the Participant resulting from illness or accident of the Participant, the Participant's spouse, or a dependent (as defined in Section 152(a) of the Code) of the Participant, loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. The amounts distributable because of an unforeseeable emergency cannot exceed the amounts necessary to satisfy such emergency plus amounts necessary to pay taxes reasonably anticipated as a result of the distribution, after taking into account the extent to which such emergency is or may be relieved through reimbursement or compensation by insurance or otherwise or by liquidation of the Participant's assets (to the extent the liquidation of such assets would not itself cause severe financial hardship). Notwithstanding any provision in the Plan to the contrary, any payment made pursuant to this Section 6(g) shall comply with Section 409A(a)(2)(A)(vi) of the Code and the regulations (or similar guidance) promulgated thereunder (or any successor provisions).

(g) No Participant shall have the right to accelerate any amounts payable under this Plan. The Committee may accelerate amounts payable under this Plan only if there is an exception to the prohibition on acceleration of payments as set forth in Treasury Regulation Section 1.409A-3(j)(4).

(h) Notwithstanding anything herein to the contrary, to the extent that any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable to a Participant by reason of the occurrence of a change in control or similar corporate event or transaction involving the Company, or a Participant’s disability or separation from service, such amount or benefit will not be payable or distributable by reason of such circumstance unless (i) the circumstances giving rise to such transaction, disability or separation from service meet any description or definition of “change in control event”, “disability” or “separation from service”, as the case may be, in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the next earliest payment or distribution date or event specified in this Plan that is permissible under Section 409A.

7. Prorated Grants. If on any Quarterly Grant Date, shares of Common Stock are not available under the Plan to grant to Non-Employee Directors the full amount of a grant contemplated by the Plan, then each such director shall receive an award equal to the number of shares of Common Stock then available under the Plan divided by the number of Non-Employee Directors entitled to a grant of shares on such date. Fractional shares shall be ignored and not granted. Any shortfall resulting from such proration shall be paid in the form of cash.

8. Withholding. Whenever the Company issues Shares under the Plan, the Company shall have the right to withhold from sums due the recipient, or to require the recipient to remit to the Company, any amount sufficient to satisfy any federal, state and/or local withholding tax requirements prior to the delivery of any certificate for such Shares.

9. Adjustments.

(a) Changes in Capitalization.

(i) The number of Common Stock shares subject to a stock right shall be proportionally adjusted to reflect a stock split (including a reverse stock split) or stock dividend, provided the only effect of the stock split or stock dividend is to increase (or decrease) on a pro rata basis the number of shares owned by each shareholder of the class of stock subject to the stock right.

(ii) Discretionary Adjustments. Upon the occurrence or in anticipation of any corporate event or transaction involving the Company (including, without limitation, any merger, reorganization, recapitalization or combination or exchange of shares, or any transaction described in Section 9(a)(i)), the Committee may, in its sole discretion, provide (i) that awards hereunder will be settled in cash rather than Common Stock, (ii) that awards hereunder will become immediately vested and exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that awards hereunder will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, or (iv) any combination of the foregoing. The Committee's determination need not be uniform and may be different for different Non-Employee Directors whether or not such Non-Employee Directors are similarly situated.

(iii) General. Any discretionary adjustments made pursuant to this Section 9(a) shall be subject to the provisions of Section 10.

(b) In the event of a Change in Control, all Deferred Stock Rights shall become immediately due and payable.

(c) The number of Shares finally granted under this Plan shall always be rounded to the next highest whole Share.

(d) Any decision of the Committee pursuant to the terms of this Section 9 shall be final, binding and conclusive upon the Participants, the Company and all other interested parties; provided, however, that to the extent required by the applicable exemptive conditions of Rule 16b-3, any such decision shall be subject to approval by the Board.

10. Amendment.

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(i) *In General.* The Committee may terminate or suspend the Plan at any time, without stockholder approval. The Committee may amend the Plan at any time and for any reason without stockholder approval; provided, however, that the Committee may condition any amendment on the approval of stockholders of the Company if such approval is necessary or deemed advisable with respect to tax, securities or other applicable laws, policies or regulations. No termination, modification or amendment of the Plan may, without the consent of a Participant, adversely affect a Participant's rights under an award granted prior thereto.

(ii) *Compliance Amendments.* Notwithstanding anything in the Plan, Election Form or other applicable agreement to the contrary, the Committee may amend the Plan, Election Form or other applicable agreement, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan, Election Form or other applicable agreement to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder. By participating in this Plan, a Non-Employee Director agrees to any amendment made pursuant to this Section to any compensation granted under the Plan without further consideration or action.

11. Indemnification. Each person who is or has been a member of the Committee or who otherwise participates in the administration or operation of this Plan shall be indemnified by the Company against, and held harmless from, any loss, cost, liability or expense that may be imposed upon or incurred by him or her in connection with or resulting from any claim, action, suit or proceeding in which such person may be involved by reason of any action taken or failure to act under the Plan and shall be fully reimbursed by the Company for any and all amounts paid by such person in satisfaction of judgment against him or her in any such action, suit or proceeding, provided he or she will give the Company an opportunity, by written notice to the Committee, to defend the same at the Company's own expense before he or she undertakes to defend it on his or her own behalf. This right of indemnification shall not be exclusive of any other rights of indemnification.

The Committee and the Board may rely upon any information furnished by the Company, its public accountants and other experts. No individual will have personal liability by reason of anything done or omitted to be done by the Company, the Committee or the Board in connection with the Plan.

12. Duration of the Plan. The Plan shall remain in effect until ten years from the Effective Date, unless terminated earlier by the Committee.

13. Expenses of the Plan. The expenses of administering the Plan shall be borne by the Company.

14. Effective Date. The Plan was originally adopted by the Board on November 23, 1998, and became effective upon the approval thereof by the stockholders of the Company on January 14, 1999 (the "Effective Date").

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**MICRON TECHNOLOGY, INC.
NONSTATUTORY STOCK OPTION PLAN**

1. Purposes of the Plan. The purposes of this Plan are:

- to attract and retain the best available personnel for positions of substantial responsibility,
- to provide additional incentive to Employees and Consultants, and
- to promote the success of the Company's business.

Nonstatutory stock options may be granted under the Plan.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Administrator" means the Board or any of its Committees as shall be administering the Plan, in accordance with Section 4 of the Plan.

(b) "Affiliate" means (i) any subsidiary or parent company of the Company, or (ii) an entity that directly or through one or more intermediaries controls, is controlled by or is under common control with, the Company, as determined by the Committee.

(c) "Applicable Laws" means the legal requirements relating to the administration of stock option plans and the issuance of stock and stock options under federal securities laws, Delaware corporate and securities laws, the Code, and the applicable laws of any foreign country or jurisdiction where options will be or are being granted under the Plan.

(d) "Board" means the Board of Directors of the Company.

(e) "Change in Control" means the acquisition by any person or entity, directly, indirectly or beneficially, acting alone or in concert, of more than thirty-five percent (35%) of the Common Stock of the Company outstanding at any time.

(f) "Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific Section of the Code or regulation thereunder shall include such Section or regulation, any valid regulation promulgated under such Section, and any comparable provision of any future law, legislation or regulation amending, supplementing or superseding such Section or regulation.

(g) "Committee" means a Committee appointed by the Board in accordance with Section 4 of the Plan.

(h) "Common Stock" means the Common Stock of the Company.

(i) “Company” means Micron Technology, Inc., a Delaware corporation.

(j) “Consultant” means any person, including an advisor, engaged by the Company or a parent, subsidiary or Affiliate to render services. The term “Consultant” shall not include any person who is also an Officer or Director of the Company.

(k) “Continuous Status as an Employee or Consultant” means that the employment or consulting relationship with the Company, any parent, subsidiary, or Affiliate, is not interrupted or terminated. Continuous Status as an Employee or Consultant shall not be considered interrupted in the case of (i) any leave of absence approved by the Company, (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor or (iii) change in status from either an Employee to a Consultant or a Consultant to an Employee. A leave of absence approved by the Company shall include sick leave, military leave, or any other personal leave approved by an authorized representative of the Company.

(l) “Director” means a member of the Board.

(m) “Disability” means total and permanent disability as defined in Section 22(e)(3) of the Code. Notwithstanding the foregoing, for any Options that constitute a nonqualified deferred compensation plan within the meaning of Section 409A(d) of the Code, “Disability” has the meaning given such term in Section 409A of the Code.

(n) “Employee” means any person, except Officers and Directors, employed by the Company or any parent, subsidiary or Affiliate of the Company.

(o) “Fair Market Value” of the Stock, on any date, means: (i) if the Stock is listed or traded on any Exchange, the average closing price for such Stock (or the closing bid, if no sales were reported) as quoted on such Exchange (or, if more than one Exchange, the Exchange with the greatest volume of trading in the Stock) for such date, or if no sales or bids were reported for such date, on the last market trading day prior to the day of determination, as reported by *Market Sweep*, a service from Interactive Data Services, Inc., or such other source as the Committee deems reliable; (ii) if the Stock is quoted on the over-the-counter market or is regularly quoted by a recognized securities dealer, but selling prices are not reported, the Fair Market Value of the Stock shall be the mean between the high bid and low asked prices for the Stock on such date, or if no sales or bids were reported for such date, on the last market trading day prior to the day of determination, as reported by *Market Sweep*, a service from Interactive Data Services, Inc., or such other source as the Committee deems reliable, or (iii) in the absence of an established market for the Stock, the Fair Market Value shall be determined by such other method as the Committee determines in good faith to be reasonable and in compliance with Code Section 409A.

(p) “Notice of Grant” means a written notice evidencing certain terms and conditions of an individual Option grant. The Notice of Grant is subject to the terms and conditions of the Option Agreement.

(q) “Officer” means a person who is an officer of the Company within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(r) “Option” means a nonstatutory stock option granted pursuant to the Plan. Such option is not intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(s) “Option Agreement” means a written agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(t) “Option Exchange Program” means a program whereby outstanding options are surrendered in exchange for options with a lower exercise price.

(u) “Optioned Stock” means the Common Stock subject to an Option.

(v) “Optionee” means an Employee or Consultant who holds an outstanding Option.

(w) “Plan” means this Nonstatutory Stock Option Plan.

(x) “Share” means a share of the Common Stock, as adjusted in accordance with Section 12 of the Plan.

3. Stock Subject to the Plan. Subject to the provisions of Section 12 of the Plan, the maximum aggregate number of Shares, which may be optioned and sold under the Plan, is 59,603,088. The Shares may be authorized, but, unissued, or reacquired Common Stock.

If an Option expires or becomes unexercisable without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated).

4. Administration of the Plan.

(a) Procedure. The Plan shall be administered by (A) the Board or (B) a committee designated by the Board, which committee shall be constituted to satisfy Applicable Laws. Once appointed, such Board may increase the size of the Committee and appoint additional members, remove members (with or without cause) and substitute new members, fill vacancies (however caused), and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

- granted hereunder;
- (i) to determine the Fair Market Value of the Common Stock;
 - (ii) to select the Consultants and Employees to whom Options may be
 - (iii) to determine whether and to what extent Options are granted hereunder;
 - (iv) to determine the number of shares of Common Stock to be covered by each Option granted hereunder;
 - (v) to approve forms of agreement for use under the Plan;
 - (vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;
 - (vii) to reduce the exercise price of any Option to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option shall have declined since the date the Option was granted;
 - (viii) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan;
 - (ix) to prescribe, amend, and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;
 - (x) to modify or amend each Option (subject to Section 14(b) of the Plan), including the discretionary authority to extend the post-termination exercisability period of Options longer than is otherwise provided for in the Plan;
 - (xi) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Option previously granted by the Administrator;
 - (xii) to institute an Option Exchange Program;
 - (xiii) to allow Optionees to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option that number of Shares having a Fair Market Value equal to the amount required to be withheld; and
 - (xiv) to make all other determinations deemed necessary or advisable for administering the Plan.

(c) Effect of Administrator's Decision. The Administrator's decisions, determinations, and interpretations shall be final and binding on all Optionees and any other holders of Options.

5. Eligibility. Options may be granted to Employees and Consultants. Employees and Consultants who are service providers to an Affiliate may be granted Options under this Plan only if the Affiliate qualifies as an "eligible issuer of service recipient stock" within the meaning of §1.409A-1(b)(5)(iii)(E) of the final regulations under Code Section 409A.

6. Limitations. Neither the Plan nor any Option shall confer upon an Optionee any right with respect to continuing the Optionee's employment or consulting relationship with the Company, nor shall they interfere in any way with the Optionee's right or the Company's right to terminate such employment or consulting relationship at any time, with or without cause.

7. Term of Plan. The Plan shall become effective upon its adoption by the Board. It shall continue in effect until terminated under Section 14 of the Plan.

8. Term of Option. The term of each Option shall be stated in the Notice of Grant.

9. Option Exercise Price and Consideration.

(a) Exercise Price. The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, but shall not be less than the Fair Market Value per share on the date of grant of the Option.

(b) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions which must be satisfied before the Option may be exercised. In doing so, the Administrator may specify that an Option may not be exercised until either the completion of a service period or the achievement of performance criteria with respect to the Company or the Optionee.

(c) Form of Consideration. The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. Such consideration may consist entirely of:

(i) cash;

(ii) check;

(iii) promissory note;

(iv) other Shares which have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised;

(v) delivery of a properly executed exercise notice together with such other documentation as the Administrator and the broker, if applicable, shall require to effect an exercise of the Option and delivery to the Company of the sale or loan proceeds required to pay the exercise price;

(vi) a reduction in the amount of any Company liability to the Optionee, other than any liability attributable to the Optionee's participation in any Company-sponsored deferred compensation program or arrangement;

(vii) any combination of the foregoing methods of payment; or

(viii) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

9/22/2003 change #2 (n)

10. Exercise of Option.

(a) Procedure for Exercise; Rights as a Shareholder. Any Option granted thereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement.

An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when the Company receives: (i) written notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such Shares, promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 12 of the Plan.

Exercising an Option in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Employment or Consulting Relationship. Upon termination of an Optionee's Continuous Status as an Employee or Consultant, other than upon the Optionee's death or Disability, the Optionee may exercise his or her Option, but only within such period of time as is specified in the Notice of Grant, and only to the extent that the Optionee was entitled to exercise it as the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). In the absence of a specified time in the Notice of Grant, the Option shall remain exercisable for 30 days following the Optionee's termination of Continuous Status as an Employee or Consultant. If, at the date of termination, the Optionee is not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee. In the event that an Optionee's Continuous Status as an Employee or Consultant terminates as a result of the Optionee's Disability, the Optionee may exercise his or her Option at any time within twelve (12) months from the date of such termination, but only to the extent that the Optionee was entitled to exercise it at the date of such termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). If, at the date of termination, the Optionee does not exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee. In the event of the death of an Optionee, the Option may be exercised at any time within twelve (12) months following the date of death (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant), by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent that the Optionee was entitled to exercise the Option at the date of death. If, at any time of death, the Optionee was not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall immediately revert to the Plan. If, after death, the Optionee's estate or a person who acquired the right to exercise the Option by bequest or inheritance does not exercise the Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(e) Suspension. Any Optionee who is also a participant in the Retirement at Micron ("RAM") Section 401(k) Plan and who requests and receives a hardship distribution from the RAM Plan, is prohibited from making, and must suspend, his or her employee elective contributions and employee contributions including, without limitation on the foregoing, the exercise of any Option granted from the date of receipt by that employee of the RAM hardship distribution.

11. Non-Transferability of Options. Unless otherwise specified by the Administrator in the Option Agreement, an Option may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee.

12. Adjustments Upon Changes in Capitalization, Dissolution, Merger, or Asset Sale.

(a) Changes in Capitalization.

Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each outstanding Option, and the number of issued shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option, as well as the price per share of Common Stock covered by each such outstanding Option, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock or any other increase or decrease in the number of shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been effected without receipt of consideration. Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding, and conclusive. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in Shares, or a combination or consolidation of the outstanding Stock into a lesser number of Shares, the authorization limit under Section 3 shall automatically be adjusted proportionately, and the Shares then subject to each Award shall automatically be adjusted proportionately without any change in the aggregate purchase price therefor. To the extent that any adjustments made pursuant to this Section 12 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, to the extent that an Option has not been previously exercised, it will terminate immediately prior to the consummation of such proposed action. The Board may, in the exercise of its sole discretion in such instances, declare that any Option shall terminate as of a date fixed by the Board and give each Optionee the right to exercise his or her Option as to all or any part of the Optioned stock, including Shares as to which the Option would not otherwise be exercisable.

(c) Merger or Asset Sale.

Upon the occurrence or in anticipation of any corporate event or transaction involving the Company (including, without limitation, any merger, reorganization, recapitalization or combination or exchange of shares or any transaction described in Section 12(a)), the Administrator may, in its sole discretion, provide (i) that Options will be settled in cash rather than Common Stock, (ii) that Options will become immediately vested and exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that Options will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, (iv) that outstanding Options may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Common Stock, as of a specified date associated with the transaction, over the exercise price of the Option, or (v) any combination of the foregoing. The Administrator's determination need not be uniform and may be different for different Optionees whether or not such Optionees are similarly situated.

(d) Change in Control. In the event of a Change in Control, the unexercised portion of the Option shall become immediately exercisable.

(e) General. Any discretionary adjustments made pursuant to this Section 12 shall be subject to the provisions of Section 14.

13. Date of Grant. The date of grant of an Option shall be, for all purposes, the date on which the Administrator makes the determination granting such Option, or such other later date as is determined by the Administrator. Notice of the determination shall be provided to each Optionee within a reasonable time after the date of such grant.

14. Amendment and Termination of the Plan.

(a) Amendment and Termination. Except as provided herein, the Board may at any time amend, alter, suspend, or terminate the Plan without shareholder approval; provided, however, that the Board may condition any amendment or modification on the approval of shareholders of the Company if such approval is necessary or deemed advisable with respect to tax, securities or other applicable laws, policies or regulations. No termination can affect options previously granted, nor may an amendment make any change in any option theretofore granted which adversely affects the rights of any Optionee, nor may an amendment be made without prior approval of the shareholders of the Company if such amendment would:

- (i) increase the number of shares that may be issued under the Plan;
- (ii) change the designation of the employees (or class of employees) eligible for participation in the Plan; or
- (iii) materially increase the benefits which may accrue to participants under the Plan.

(b) Effect of Amendment or Termination. No amendment, alteration, suspension, or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company.

(c) Compliance Amendments. Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, the Committee may amend the Plan or any Notice of Grant, Option Agreement or other applicable agreement, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan, Notice of Grant, Option Agreement or other applicable agreement to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder. By accepting an Option under this Plan, a Optionee agrees to any amendment made pursuant to this Section to any Option granted under the Plan without further consideration or action.

15. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares shall comply with all Applicable Laws and the requirements of any stock exchange or quotation system upon which the Shares may then be listed or quoted, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

16. Liability of Company. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

17. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

18. Restriction on Repricing. Without the prior approval of the shareholders of the Company, the Administrator shall not reprice any Options issued under the Plan through cancellation and regrant, by lowering the exercise price, or by any other means.

19. Special Provisions Related To Section 409A of the Code.

(a) Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, to the extent that any amount or benefit that would constitute non-exempt "deferred compensation" for purposes of Section 409A of the Code would otherwise be payable or distributable under the Plan or any Notice of Grant, Option Agreement or other applicable agreement by reason of the occurrence of a Change in Control, or the Optionee's Disability or separation from service, such amount or benefit will not be payable or distributable to the Optionee by reason of such circumstance unless (i) the circumstances giving rise to such Change in Control, Disability or separation from service meet any description or definition of "change in control event", "disability" or "separation from service", as the case may be, in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. This provision does not prohibit the *vesting* of any Option upon a Change in Control, Disability or separation from service, however defined. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the next earliest payment or distribution date or event specified in the Notice of Grant, Option Agreement or other applicable agreement that is permissible under Section 409A.

(b) If any one or more Options granted under the Plan to a Optionee could qualify for any separation pay exemption described in Treas. Reg. Section 1.409A-1(b)(9), but such Options in the aggregate exceed the dollar limit permitted for the separation pay exemptions, the Company (acting through the Committee or the Head of Human Resources) shall determine which Options or portions thereof will be subject to such exemptions.

(c) Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, if any amount or benefit that would constitute non-exempt "deferred compensation" for purposes of Section 409A of the Code would otherwise be payable or distributable under this Plan or in any Notice of Grant, Option Agreement or other applicable agreement by reason of a Optionee's separation from service during a period in which the Optionee is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Committee under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes):

(i) if the payment or distribution is payable in a lump sum, the Optionee's right to receive payment or distribution of such non-exempt deferred compensation will be delayed until the earlier of the Optionee's death or the first day of the seventh month following the Optionee's separation from service; and

(ii) if the payment or distribution is payable over time, the amount of such non-exempt deferred compensation that would otherwise be payable during the six-month period immediately following the Optionee's separation from service will be accumulated and the Optionee's right to receive payment or distribution of such accumulated amount will be delayed until the earlier of the Optionee's death or the first day of the seventh month following the Optionee's separation from service, whereupon the accumulated amount will be paid or distributed to the Optionee and the normal payment or distribution schedule for any remaining payments or distributions will resume.

For purposes of this Plan, the term "Specified Employee" has the meaning given such term in Code Section 409A and the final regulations thereunder, *provided, however*, that, as permitted in such final regulations, the Company's Specified Employees and its application of the six-month delay rule of Code Section 409A(a)(2)(B)(i) shall be determined in accordance with rules adopted by the Board or any committee of the Board, which shall be applied consistently with respect to all nonqualified deferred compensation arrangements of the Company, including this Plan.

MICRON TECHNOLOGY, INC.

2001 STOCK OPTION PLAN

1. Purposes of the Plan. The purposes of this Stock Option Plan are:

- to attract and retain the best available personnel for positions of substantial responsibility,
- to provide additional incentive to Employees, Directors, and Consultants, and
- to promote the success of the Company's business.

Options granted under the Plan may be Incentive Stock Options or Nonstatutory Stock Options, as determined by the Administrator at the time of grant.

2. Definitions. As used herein, the following definitions shall apply:

- (a) "Administrator" means the Board or any of its Committees as shall be administering the Plan, in accordance with Section 4 of the Plan.
- (b) "Affiliate" means (i) any subsidiary or parent company of the Company, or (ii) an entity that directly or through one or more intermediaries controls, is controlled by or is under common control with, the Company, as determined by the Committee.
- (c) "Applicable Laws" means the legal requirements relating to the administration of stock option plans under Delaware corporate and securities laws and the Code.
- (d) "Board" means the Board of Directors of the Company.
- (e) "Change in Control" means the acquisition by any person or entity, directly, indirectly or beneficially, acting alone or in concert, of more than thirty-five percent (35%) of the Common Stock of the Company outstanding at any time.
- (f) "Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific Section of the Code or regulation thereunder shall include such Section or regulation, any valid regulation promulgated under such Section, and any comparable provision of any future law, legislation or regulation amending, supplementing or superseding such Section or regulation.
- (g) "Committee" means a Committee appointed by the Board in accordance with Section 4 of the Plan.
- (h) "Common Stock" means the Common Stock of the Company.
- (i) "Company" means Micron Technology, Inc., a Delaware corporation.
- (j) "Consultant" means any person, including an advisor, engaged by the Company or a Parent or Subsidiary to render services and who is compensated for such services.
- (k) "Continuous Status as an Employee or Consultant" means that the employment or consulting relationship with the Company, any Parent, or Subsidiary, is not interrupted or terminated. Continuous Status as an Employee or Consultant shall not be considered interrupted in the case of (i) military leave, sick leave, or any personal leave of absence approved by the Company, or (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor, or (iii) in the discretion of the Administrator as specified at or prior to such occurrence, in the case of a spin-off, sale, or disposition of the Optionee's employer from the Company or any Parent or Subsidiary. For purposes of Incentive Stock Options, no such leave may exceed

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90 days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, on the 91st day of such leave any Incentive Stock Option held by the Optionee shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

(l) “Director” means a member of the Board.

(m) “Disability” means total and permanent disability as defined in Section 22(e)(3) of the Code. Notwithstanding the foregoing, for any Options that constitute a nonqualified deferred compensation plan within the meaning of Section 409A(d) of the Code, “Disability” has the meaning given such term in Section 409A of the Code.

(n) “Employee” means any person, including Officers and Directors, employed by the Company or any Parent or Subsidiary of the Company. Neither service as a Director nor payment of a director’s fee by the Company shall be sufficient to constitute “employment” by the Company.

(o) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(p) “Fair Market Value” means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange, including without limitation the New York Stock Exchange (“NYSE”), or a national market system, the Fair Market Value of a Share of Common Stock shall be the average closing price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system (or the exchange with the greatest volume of trading in Common Stock) for the last market trading day prior to the day of determination, as reported by Bloomberg L.P. or such other source as the Administrator deems reliable;

(ii) If the Common Stock is quoted on the over-the-counter market or is regularly quoted by a recognized securities dealer, but selling prices are not reported, the Fair Market Value of a Share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the last market trading day prior to the day of determination, as reported by Bloomberg L.P. or such other source as the Administrator deems reliable;

(iii) In the absence of an established market for the Common Stock, the Fair Market Value shall be determined by such other method as the Committee determines in good faith to be reasonable and in compliance with Code Section 409A.

(q) “Incentive Stock Option” means an Option that qualifies as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(r) “Nonstatutory Stock Option” means an Option that does not qualify as an Incentive Stock Option.

(s) “Notice of Grant” means a written notice evidencing certain terms and conditions of an individual Option grant. The Notice of Grant is subject to the terms and conditions of the Option Agreement.

(t) “Officer” means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(u) “Option” means a stock option granted pursuant to the Plan.

(v) “Option Agreement” means a written agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(w) “Optioned Stock” means the Common Stock subject to an Option.

(x) “Optionee” means an Employee or Consultant who holds an outstanding Option.

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- (y) “Parent” means a “parent corporation”, whether now or hereafter existing, as defined in Section 424(e) of the Code.
- (z) “Plan” means this 2001 Option Plan.
- (aa) “Rule 16b-3” means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.
- (bb) “Share” means a share of the Common Stock, as adjusted in accordance with Section 12 of the Plan.
- (cc) “Subsidiary” means a “subsidiary corporation”, whether now or hereafter existing, as defined in Section 424(f) of the Code. In the case of an Option that is not intended to qualify as an Incentive Stock Option, the term “Subsidiary” shall also include any other entity in which the Company, or any Parent or Subsidiary of the Company has a significant ownership interest.

3. Stock Subject to the Plan. Subject to the provisions of Section 12 of the Plan, the maximum aggregate number of Shares which may be optioned and sold under the Plan is 47,000,000 Shares. The Shares may be authorized, but unissued, or reacquired Common Stock.

If an Option expires or becomes unexercisable without having been exercised in full, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated); provided, however, that Shares that have actually been issued under the Plan shall not be returned to the Plan and shall not become available for future distribution under the Plan.

4. Administration of the Plan.

(a) Administrator. The Plan shall be administered by a Committee appointed by the Board (which Committee shall consist of two or more directors) or, at the discretion of the Board from time to time, the Plan may be administered by the Board. It is intended that the directors appointed to serve on the Committee shall be “non-employee directors” (within the meaning of Rule 16b-3) and “outside directors” (within the meaning of Code Section 162(m)). However, the mere fact that a Committee member shall fail to qualify under either of the foregoing requirements shall not invalidate any Option granted by the Committee which Option is otherwise validly made under the Plan. The members of the Committee shall be appointed by, and may be changed at any time and from time to time in the discretion of, the Board. The Board, in its discretion, may delegate to a special Committee all or part of the Administrator’s authority and duties with respect to grants and awards to individuals who at the time of grant are not, and are not anticipated to become, either (i) “covered employees,” as defined in Code Section 162(m)(3), or (ii) persons subject to the reporting and other provisions of Section 16 of the Exchange Act. The Board may revoke or amend the terms of a delegation at any time but such action shall not invalidate any prior actions of the delegate or delegates that were consistent with the terms of the Plan.

(b) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

- (i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(o) of the Plan;
- (ii) to select the Employees, Directors, and Consultants to whom Options may be granted hereunder;
- (iii) to determine whether and to what extent Options are granted;
- (iv) to determine the number of shares of Common Stock to be covered by each Option granted hereunder;
- (v) to approve forms of agreement for use under the Plan;

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(vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vii) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan;

(viii) to prescribe, amend, and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;

(ix) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Option previously granted by the Administrator;

(x) to make all other determinations deemed necessary or advisable for administering the Plan; and

(xi) to allow Optionees to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option that number of Shares having a Fair Market Value equal to the amount required to be withheld. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by an Optionee to have Shares withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable.

(c) Effect of Administrator's Decision. The Administrator's decisions, determinations, and interpretations shall be final and binding on all Optionees and any other holders of Options.

5. Eligibility. Nonstatutory Stock Options may be granted to Employees, Directors, and Consultants. Incentive Stock Options may be granted only to Employees. If otherwise eligible, an Employee or Consultant who has been granted an Option may be granted additional Options. Employees and Consultants who are service providers to an Affiliate may be granted Options under this Plan only if the Affiliate qualifies as an "eligible issuer of service recipient stock" within the meaning of §1.409A-1(b)(5)(iii)(E) of the final regulations under Code Section 409A.

6. Limitations.

(a) Each Option shall be designated in the Notice of Grant as either an Incentive Stock Option or a Nonstatutory Stock Option. However, notwithstanding such designations, to the extent that the aggregate Fair Market Value of Shares subject to an Optionee's Incentive Stock Options granted by the Company or any Parent or Subsidiary, which become exercisable for the first time during any calendar year (under all plans of the Company or any Parent or Subsidiary) exceeds \$100,000, such excess Options shall be treated as Nonstatutory Stock Options. For purposes of this Section 6(a), Incentive Stock Options shall be taken into account in the order in which they were granted, and the Fair Market Value of the Shares shall be determined as of the time of grant.

(b) Neither the Plan nor any Option shall confer upon an Optionee any right with respect to continuing the Optionee's employment or consulting relationship with the Company, nor shall they interfere in any way with the Optionee's right or the Company's right to terminate such employment or consulting relationship at any time, with or without cause.

(c) The following limitations shall apply to grants of Options to Employees:

(i) No Employee shall be granted, in any fiscal year of the Company, Options to purchase more than 2,000,000 Shares.

(ii) The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization as described in

Section 12.

11/21/03 – changes # 14(a)(i)(ii)(iii)

7. Term of Plan. Subject to Section 18 of the Plan, the Plan shall become effective upon the earlier to occur of its adoption by the Board or its approval by the shareholders of the Company as described in Section 18 of the Plan. It shall continue in effect for a term of ten (10) years unless terminated earlier under Section 14 of the Plan.

8. Term of Option. The term of each Option shall be stated in the Notice of Grant, but shall not exceed ten (10) years; provided, however, that in the case of an Incentive Stock Option granted to an Optionee who, at the time Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or any Parent or Subsidiary, the term of the Incentive Stock Option shall not be longer than five (5) years from the date of grant.

9. Option Exercise Price and Consideration.

(a) Exercise Price. The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, but shall not be less than the Fair Market Value per share on the date of grant of the Option. In the case of an Incentive Stock Option granted to an Employee who, at the time the Incentive Stock Option is granted, owns stock representing more than ten percent (10%) of the voting power of all classes of stock of the Company or Parent or Subsidiary, the per share exercise price shall be no less than 110% of the Fair Market Value per Share on the date of grant.

(b) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions which must be satisfied before the Option may be exercised. In doing so, the Administrator may specify that an Option may not be exercised until the completion of a service period.

(c) Form of Consideration. The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. The Administrator shall determine the acceptable form of consideration at the time of grant. Such consideration may consist entirely of:

- (i) cash;
- (ii) check;
- (iii) promissory note;
- (iv) other Shares which have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised;
- (v) to the extent permitted under Regulation T of the Federal Reserve Board, and subject to applicable securities laws and the Company's adoption of such program in connection with the Plan, the delivery of a properly executed exercise notice together with such other documentation as the Administrator and the broker, if applicable, shall require to effect a so-called "cashless exercise" whereby the broker sells the Option Shares and delivers cash sales proceeds to the Company in payment of the exercise price and any applicable taxes (in which case the date of exercise shall be deemed to be the date on which notice of exercise is received by the Company, and the exercise price shall be delivered to the Company on the settlement date);
- (vi) a reduction in the amount of any Company liability to the Optionee, other than any liability attributable to the Optionee's participation in any Company sponsored deferred compensation program or arrangement;
- (vii) any combination of the foregoing methods of payment; or
- (viii) such other consideration and method of payment for the issuance of Shares to the extent approved by the Administrator and permitted by Applicable Laws.

10. Exercise of Option.

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(a) Procedure for Exercise; Rights as a Shareholder. Any Option granted thereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement.

An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when the Company receives: (i) notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Until the stock certificate evidencing such Shares is issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate, either in book entry form or in certificate form, promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 12 of the Plan.

Exercising an Option in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Employment or Consulting Relationship. Upon termination of an Optionee's Continuous Status as an Employee or Consultant, other than upon the Optionee's death or Disability, the Optionee may exercise his or her Option, but only within such period of time as is specified in the Notice of Grant, and only to the extent that the Optionee was entitled to exercise it as the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). In the absence of a specified time in the Notice of Grant, the Option shall remain exercisable for thirty 30 days following the Optionee's termination of Continuous Status as an Employee or Consultant. In the case of an Incentive Stock Option, such period of time shall not exceed thirty (30) days from the date of termination. If, at the date of termination, the Optionee is not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee. In the event that an Optionee's Continuous Status as an Employee or Consultant terminates as a result of the Optionee's Disability, the Optionee may exercise his or her Option at any time within twelve (12) months from the date of such termination, but only to the extent that the Optionee was entitled to exercise it at the date of such termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). If, at the date of termination, the Optionee does not exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee. In the event of the death of an Optionee, the Option may be exercised at any time within twelve (12) months following the date of death (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant), by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent that the Optionee was entitled to exercise the Option at the date of death. If, at any time of death, the Optionee was not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall immediately revert to the Plan. If, after death, the Optionee's estate or a person who acquired the right to exercise the Option by bequest or inheritance does not exercise the Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(e) Suspension. Any Optionee who is also a participant in the Retirement at Micron ("RAM") Section 401(k) Plan and who requests and receives a hardship distribution from the RAM Plan, is prohibited from making, and must suspend, his or her employee elective contributions and employee contributions including, without limitation on the foregoing, the exercise of any Option granted from the date of receipt by that employee of the RAM hardship distribution.

11. Non-Transferability of Options. Unless determined otherwise by the Administrator, an Option may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by

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the laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee. If the Administrator makes an Option transferable, such Option shall contain such additional terms and conditions as the Administrator deems appropriate.

12. Adjustments Upon Changes in Capitalization, Dissolution, Corporate Transaction, or Change in Control.

(a) Changes in Capitalization. Subject to any required action by the shareholders of the Company, the authorization limits under Sections 3 and 6(c)(i) of the Plan shall be adjusted proportionately and the number of shares of Common Stock covered by each outstanding Option, and the number of issued shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option, as well as the price per share of Common Stock covered by each such outstanding Option, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock or any other increase or decrease in the number of shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been “effected without receipt of consideration.” Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding, and conclusive. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in Shares, or a combination or consolidation of the outstanding Stock into a lesser number of Shares, the authorization limits under Section 3 and 6(c) shall automatically be adjusted proportionately, and the Shares then subject to each Award shall automatically be adjusted proportionately without any change in the aggregate purchase price therefor. To the extent that any adjustments made pursuant to this Section 12 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options.

(b) Dissolution or Liquidation. To the extent not previously exercised, Options will terminate immediately prior to the consummation of any proposed dissolution or liquidation of the Company. The Board may, in the exercise of its sole discretion in such instances, declare that any Option shall terminate as of a date fixed by the Board and give each Optionee the right to exercise his or her Option as to all or any part of the Optioned Stock, including Shares as to which the Option would not otherwise be exercisable. To the extent that this provision causes Incentive Stock Options to exceed the dollar limitation set forth in Section 6(a), the excess Options shall be deemed to be Nonstatutory Stock Options.

(c) Corporate Transaction. Upon the occurrence or in anticipation of any corporate event or transaction involving the Company (including, without limitation, any merger, reorganization, recapitalization or combination or exchange of shares or any transaction described in Section 12(a)), the Administrator may, in its sole discretion, provide (i) that Options will be settled in cash rather than Common Stock, (ii) that Options will become immediately vested and exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that Options will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, (iv) that outstanding Options may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Common Stock, as of a specified date associated with the transaction, over the exercise price of the Option, or (v) any combination of the foregoing. The Administrator’s determination need not be uniform and may be different for different Optionees whether or not such Optionees are similarly situated.

(d) Change in Control. In the event of a Change in Control, the unexercised portion of each Option then outstanding shall become wholly vested and immediately exercisable. To the extent that this provision causes Incentive Stock Options to exceed the dollar limitation set forth in Section 6(a), the excess Options shall be deemed to be Nonstatutory Stock Options.

(e) General. Any discretionary adjustments made pursuant to this Section 12 shall be subject to the provisions of Section 14. To the extent that any adjustments made pursuant to this Section 12 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options.

13. Date of Grant. The date of grant of an Option shall be, for all purposes, the date on which the Administrator makes the determination granting such Option, or such other later date as is determined by the

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Administrator. Notice of the determination shall be provided to each Optionee within a reasonable time after the date of such grant.

14. Amendment and Termination of the Plan.

(a) Amendment and Termination. Except as provided herein, the Board may at any time amend, alter, suspend, or terminate the Plan without shareholder approval; provided, however, that the Board may condition any amendment or modification on the approval of shareholders of the Company if such approval is necessary or deemed advisable with respect to tax, securities or other applicable laws, policies or regulations. No termination can affect options previously granted, nor may an amendment make any change in any option theretofore granted which adversely affects the rights of any Optionee, nor may an amendment be made without prior approval of the shareholders of the Company if such amendment would:

- (i) increase the number of shares that may be issued under the Plan;
- (ii) change the designation of the employees (or class of employees) eligible for participation in the Plan; or
- (iii) materially increase the benefits which may accrue to participants under the Plan.

(b) Effect of Amendment or Termination. No amendment, alteration, suspension, or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company.

(c) Compliance Amendments. Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, the Committee may amend the Plan or any Notice of Grant, Option Agreement or other applicable agreement, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan, Notice of Grant, Option Agreement or other applicable agreement to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder. By accepting an Option under this Plan, a Optionee agrees to any amendment made pursuant to this Section to any Option granted under the Plan without further consideration or action.

15. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, Applicable Laws, and the requirements of any stock exchange or quotation system upon which the Shares may then be listed or quoted, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

16. Liability of Company.

(a) Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

(b) Grants Exceeding Allotted Shares. If the Optioned Stock covered by an Option exceeds, as of the date of grant, the number of Shares which may be issued under the Plan without additional shareholder approval, such Option shall be void with respect to such excess Optioned Stock, unless shareholder approval of an

amendment sufficiently increasing the number of shares subject to the Plan is timely obtained in accordance with Section 14(b) of the Plan.

17. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

18. Shareholder Approval. Continuance of the Plan shall be subject to approval by the shareholders of the Company within twelve (12) months before or after the date the Plan is adopted. Such shareholder approval shall be obtained in the manner and to the degree required under applicable federal and Delaware law.

19. Restriction on Repricing. Without the prior approval of the shareholders of the Company, the Administrator shall not reprice any Options issued under the Plan through cancellation and regrant, by lowering the exercise price, or by any other means.

20. Special Provisions Related To Section 409A of the Code.

(a) Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, to the extent that any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under the Plan or any Notice of Grant, Option Agreement or other applicable agreement by reason of the occurrence of a Change in Control, or the Optionee’s Disability or separation from service, such amount or benefit will not be payable or distributable to the Optionee by reason of such circumstance unless (i) the circumstances giving rise to such Change in Control, Disability or separation from service meet any description or definition of “change in control event”, “disability” or “separation from service”, as the case may be, in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. This provision does not prohibit the vesting of any Option upon a Change in Control, Disability or separation from service, however defined. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the next earliest payment or distribution date or event specified in the Notice of Grant, Option Agreement or other applicable agreement that is permissible under Section 409A.

(b) If any one or more Options granted under the Plan to a Optionee could qualify for any separation pay exemption described in Treas. Reg. Section 1.409A-1(b)(9), but such Options in the aggregate exceed the dollar limit permitted for the separation pay exemptions, the Company (acting through the Committee or the Head of Human Resources) shall determine which Options or portions thereof will be subject to such exemptions.

(c) Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, if any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under this Plan or in any Notice of Grant, Option Agreement or other applicable agreement by reason of a Optionee’s separation from service during a period in which the Optionee is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Committee under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes):

(i) if the payment or distribution is payable in a lump sum, the Optionee’s right to receive payment or distribution of such non-exempt deferred compensation will be delayed until the earlier of the Optionee’s death or the first day of the seventh month following the Optionee’s separation from service; and

(ii) if the payment or distribution is payable over time, the amount of such non-exempt deferred compensation that would otherwise be payable during the six-month period immediately following the Optionee’s separation from service will be accumulated and the Optionee’s right to receive payment or distribution of such accumulated amount will be delayed until the earlier of the Optionee’s death or the first day of the seventh month following the Optionee’s separation from service, whereupon the accumulated amount will be paid or distributed to the Optionee and the normal payment or distribution schedule for any remaining payments or distributions will resume.

For purposes of this Plan, the term “Specified Employee” has the meaning given such term in Code Section 409A and the final regulations thereunder, *provided*, however, that, as permitted in such final regulations, the

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Company’s Specified Employees and its application of the six-month delay rule of Code Section 409A(a)(2)(B)(i) shall be determined in accordance with rules adopted by the Board or any committee of the Board, which shall be applied consistently with respect to all nonqualified deferred compensation arrangements of the Company, including this Plan.

MICRON TECHNOLOGY, INC.
2002 EMPLOYMENT INDUCEMENT STOCK OPTION PLAN

1. Purposes of the Plan. The purposes of this Employment Inducement Stock Option Plan are to attract and retain the best available personnel for new employment positions with the Company or its Subsidiaries and thereby promote the success of the Company's business. Options granted under the Plan shall be Nonstatutory Stock Options.
2. Definitions. As used herein, the following definitions shall apply:
 - (a) "Administrator" means the Board or any of its Committees as shall be administering the Plan, in accordance with Section 4 of the Plan.
 - (b) "Affiliate" means (i) any subsidiary or parent company of the Company, or (ii) an entity that directly or through one or more intermediaries controls, is controlled by or is under common control with, the Company, as determined by the Committee.
 - (c) "Applicable Laws" means the legal requirements relating to the administration of stock option plans under Delaware corporate and securities laws and the Code.
 - (d) "Board" means the Board of Directors of the Company.
 - (e) "Change in Control" means the acquisition by any person or entity, directly, indirectly or beneficially, acting alone or in concert, of more than thirty-five percent (35%) of the Common Stock of the Company outstanding at any time.
 - (f) "Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific Section of the Code or regulation thereunder shall include such Section or regulation, any valid regulation promulgated under such Section, and any comparable provision of any future law, legislation or regulation amending, supplementing or superseding such Section or regulation.
 - (g) "Committee" means a Committee appointed by the Board in accordance with Section 4 of the Plan.
 - (h) "Common Stock" means the Common Stock of the Company.
 - (i) "Company." means Micron Technology, Inc., a Delaware corporation.
 - (j) "Consultant" means any person, including an advisor, engaged by the Company or any Subsidiary to render services.
 - (k) "Continuous Status as an Employee or Consultant" means that the employment or consulting relationship with the Company or any Subsidiary is not interrupted or terminated. Continuous Status as an Employee or Consultant shall not be considered interrupted in the case of (i) military leave, sick leave, or any personal leave of absence approved by the Company, or (ii) transfers between locations of the Company or between the Company, any Subsidiary, or any successor, or (iii) the transition from an Employee to a Consultant provided that the person becomes a Consultant immediately after his or her employment is terminated, or (iv) in the discretion of the Administrator as specified at or prior to such occurrence, in the case of a spin-off, sale, or disposition of the Optionee's employer from the Company or any Parent or Subsidiary.
 - (l) "Director" means a member of the Board.

(m) “Disability” means total and permanent disability as defined in Section 22(e)(3) of the Code. Notwithstanding the foregoing, for any Options that constitute a nonqualified deferred compensation plan within the meaning of Section 409A(d) of the Code, “Disability” has the meaning given such term in Section 409A of the Code.

(n) “Employee” means any person, including an Officer or Director, who is a common law employee of the Company or any Subsidiary of the Company. Neither service as a Director nor payment of a Director’s fee by the Company shall be sufficient to constitute “employment” by the Company.

(o) “Exchange Act” means the Securities Exchange Act of 1934, as amended.

(p) “Fair Market Value” means, as of any date, the value of Common Stock determined as follows:

(i) If the Common Stock is listed on any established stock exchange, including without limitation the New York Stock Exchange (“NYSE”), or a national market system, the Fair Market Value of a Share of Common Stock shall be the average closing price for such stock (or the closing bid, if no sales were reported) as quoted on such exchange or system (or the exchange with the greatest volume of trading in Common Stock) for the last market trading day prior to the day of determination, as reported by Bloomberg L.P. or such other source as the Administrator deems reliable;

(ii) If the Common Stock is quoted on the over-the-counter market or is regularly quoted by a recognized securities dealer, but selling prices are not reported, the Fair Market Value of a Share of Common Stock shall be the mean between the high bid and low asked prices for the Common Stock on the last market trading day prior to the day of determination, as reported by Bloomberg L.P. or such other source as the Administrator deems reliable;

(iii) In the absence of an established market for the Common Stock, the Fair Market Value shall be determined by such other method as the Committee determines in good faith to be reasonable and in compliance with Code Section 409A.

(q) “Nonstatutory Stock Option” means an Option that does not qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(r) “Notice of Grant” means a written notice evidencing certain terms and conditions of an individual Option grant. The Notice of Grant is subject to the terms and conditions of the Option Agreement.

(s) “Officer” means a person who is an officer of the Company within the meaning of Section 16 of the Exchange Act and the rules and regulations promulgated thereunder.

(t) “Option” means a stock option granted pursuant to the Plan.

(u) “Option Agreement” means a written agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(v) “Optioned Stock” means the Common Stock subject to an Option.

(w) “Optionee” means an Employee who holds an outstanding Option granted under the Plan.

(x) “Parent” means a “parent corporation”, whether now or hereafter existing, as defined in Section 424(e) of the Code.

(y) “Plan” means this 2002 Employment Inducement Stock Option Plan.

(z) “Rule 16b-3” means Rule 16b-3 of the Exchange Act or any successor to Rule 16b-3, as in effect when discretion is being exercised with respect to the Plan.

(aa) “Share” means a share of the Common Stock, as adjusted in accordance with Section 12 of the Plan.

(bb) “Subsidiary” means a “subsidiary corporation”, whether now or hereafter existing, as defined in Section 424(f) of the Code, and shall also include any other entity in which the Company, or any Subsidiary of the Company has a significant ownership interest.

3. Stock Subject to the Plan. Subject to the provisions of Section 12 of the Plan, the maximum aggregate number of Shares which may be optioned and sold under the Plan is 1,000,000 Shares. The Shares may be authorized, but unissued, or reacquired Common Stock.

If an Option expires or becomes unexercisable without having been exercised in full, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated); provided, however, that Shares that have actually been issued under the Plan shall not be returned to the Plan and shall not become available for future distribution under the Plan.

4. Administration of the Plan.

(a) Administrator. The Plan shall be administered by a Committee appointed by the Board (which Committee shall consist of two or more Directors) or, at the discretion of the Board from time to time, the Plan may be administered by the Board. It is intended that the Directors appointed to serve on the Committee shall be “non-employee directors” (within the meaning of Rule 16b-3). However, the mere fact that a Committee member shall fail to so qualify shall not invalidate any Option granted by the Committee which Option is otherwise validly made under the Plan. The members of the Committee shall be appointed by, and may be changed at any time and from time to time in the discretion of, the Board. The Board, in its discretion, may delegate to a special committee all or part of the Administrator’s authority and duties with respect to grants and awards to individuals who at the time of grant are not, and are not anticipated to become, persons subject to the reporting and other provisions of Section 16 of the Exchange Act. The Board may revoke or amend the terms of a delegation at any time but such action shall not invalidate any prior actions of the delegate or delegates that were consistent with the terms of the Plan.

(b) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

(i) to determine the Fair Market Value of the Common Stock, in accordance with Section 2(o) of the Plan;

(ii) to select the Employees to whom Options may be granted hereunder; provided, however, that Options may be granted hereunder only to a person as an inducement for him or her to accept employment with the Company or any Subsidiary;

(iii) to determine whether and to what extent Options are granted;

(iv) to determine the number of shares of Common Stock to be covered by each Option granted hereunder;

(v) to approve forms of agreement for use under the Plan;

(vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;

(vii) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan;

(viii) to prescribe, amend, and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;

(ix) to modify or amend each Option (subject to Section 14 of the Plan);

(x) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Option previously granted by the Administrator; and

(xi) to make all other determinations deemed necessary or advisable for administering the Plan; and

(xii) to allow Optionees to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option that number of Shares having a Fair Market Value equal to the minimum amount (and not any greater amount) required by law to be withheld. The Fair Market Value of the Shares to be withheld shall be determined on the date that the amount of tax to be withheld is to be determined. All elections by an Optionee to have Shares withheld for this purpose shall be made in such form and under such conditions as the Administrator may deem necessary or advisable.

(c) Effect of Administrator's Decision. The Administrator's decisions, determinations, and interpretations shall be final and binding on all Optionees and any other holders of Options.

5. Eligibility. Options may be granted hereunder only to a person who is being hired as an Employee of the Company or any Subsidiary as an inducement to such employment. A person who has been granted an Option under this Plan may not be granted additional Options under this Plan, but may be granted options or other awards under other plans of the Company. Employees and Consultants who are service providers to an Affiliate may be granted Options under this Plan only if the Affiliate qualifies as an "eligible issuer of service recipient stock" within the meaning of §1.409A-1(b)(5)(iii)(E) of the final regulations under Code Section 409A.

6. Limitations.

(a) Neither the Plan nor any Option shall confer upon an Optionee any right with respect to continuing the Optionee's employment with the Company, nor shall they interfere in any way with the Optionee's right or the Company's right to terminate such employment at any time, with or without cause.

(b) The following limitations shall apply to grants of Options hereunder:

(i) No Employee shall be granted under the Plan Options to purchase more than 500,000 Shares.

(ii) The foregoing limitations shall be adjusted proportionately in connection with any change in the Company's capitalization as described in

Section 12.

9/22/2003 – change # 2(o) (i),(ii)

7. Effective Date. The Plan shall become effective upon its adoption by the Board.

8. Term of Option. The term of each Option shall be stated in the Notice of Grant, but shall not exceed ten (10) years.

9. Option Exercise Price and Consideration.

(a) Exercise Price. The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, but shall not be less than the Fair Market Value per share on the date of grant of the Option.

(b) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions which must be satisfied before the Option may be exercised. In doing so, the Administrator may specify that an Option may not be exercised until the completion of a service period.

(c) Form of Consideration. The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. The Administrator shall determine the acceptable form of consideration. Such consideration may consist entirely of:

(i) cash;

(ii) check;

(iii) promissory note;

(iv) other Shares which have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised;

(v) to the extent permitted under Regulation T of the Federal Reserve Board, and subject to applicable securities laws and the Company's adoption of such program in connection with the Plan, the delivery of a properly executed exercise notice together with such other documentation as the Administrator and the broker, if applicable, shall require to effect a so-called "cashless exercise" whereby the broker sells the Option Shares and delivers cash sales proceeds to the Company in payment of the exercise price and any applicable taxes (in which case the date of exercise shall be deemed to be the date on which notice of exercise is received by the Company, and the exercise price shall be delivered to the Company on the settlement date);

(vi) a reduction in the amount of any Company liability to the Optionee, other than any liability attributable to the Optionee's participation in any Company sponsored deferred compensation program or arrangement;

(vii) any combination of the foregoing methods of payment; or

(viii) such other consideration and method of payment for the issuance of Shares to the extent approved by the Administrator and permitted by Applicable Laws.

10. Exercise of Option.

(a) Procedure for Exercise; Rights as a Shareholder. Any Option granted hereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement.

An Option may not be exercised for a fraction of a Share.

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An Option shall be deemed exercised when the Company receives: (i) notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Until the stock certificate evidencing such Shares is issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such stock certificate, either in book entry form or in certificate form, promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 12 of the Plan.

Exercising an Option in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Employment or Consulting Relationship. Upon termination of an Optionee's Continuous Status as an Employee or Consultant, other than upon the Optionee's death or Disability, the Optionee may exercise his or her Option, but only within such period of time as is specified in the Notice of Grant, and only to the extent that the Optionee was entitled to exercise it as the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). In the absence of a specified time in the Notice of Grant, the Option shall remain exercisable for thirty 30 days following the Optionee's termination of Continuous Status as an Employee or Consultant. If, at the date of termination, the Optionee is not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee. In the event that an Optionee's Continuous Status as an Employee terminates as a result of the Optionee's Disability, the Optionee may exercise his or her Option at any time within twelve (12) months from the date of such termination, but only to the extent that the Optionee was entitled to exercise it at the date of such termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). If, at the date of termination, the Optionee does not exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee. In the event of the death of an Optionee, the Option may be exercised at any time within twelve (12) months following the date of death (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant), by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent that the Optionee was entitled to exercise the Option at the date of death. If, at any time of death, the Optionee was not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall immediately revert to the Plan. If, after death, the Optionee's estate or a person who acquired the right to exercise the Option by bequest or inheritance does not exercise the Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(e) Suspension. Any Optionee who is also a participant in the Retirement at Micron ("RAM") Section 401(k) Plan and who requests and receives a hardship distribution from the RAM Plan, is prohibited from making, and must suspend, his or her employee elective contributions and employee contributions including, without limitation on the foregoing, the exercise of any Option granted from the date of receipt by that employee of the RAM hardship distribution for the time period, if any, required by the RAM Plan.

11. Non-Transferability of Options. Unless determined otherwise by the Administrator, an Option may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by the laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee. If the Administrator makes an Option transferable, such Option shall contain such additional terms and conditions as the Administrator deems appropriate.

12. Adjustments Upon Changes in Capitalization, Dissolution, Corporate Transaction, or Change in Control.

(a) Changes in Capitalization. Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each outstanding Option, and the number of issued shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option, as well as the price per share of Common Stock covered by each such outstanding Option, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock or any other increase or decrease in the number of shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding, and conclusive. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in Shares, or a combination or consolidation of the outstanding Stock into a lesser number of Shares, the authorization limits under Section 3 and 6(b) shall automatically be adjusted proportionately, and the Shares then subject to each Award shall automatically be adjusted proportionately without any change in the aggregate purchase price therefor. To the extent that any adjustments made pursuant to this Section 12 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options.

(b) Dissolution or Liquidation. To the extent not previously exercised, Options will terminate immediately prior to the consummation of any proposed dissolution or liquidation of the Company. The Board may, in the exercise of its sole discretion in such instances, declare that any Option shall terminate as of a date fixed by the Board and give each Optionee the right to exercise his or her Option as to all or any part of the Optioned Stock, including Shares as to which the Option would not otherwise be exercisable.

(c) Corporate Transaction. Upon the occurrence or in anticipation of any corporate event or transaction involving the Company (including, without limitation, any merger, reorganization, recapitalization or combination or exchange of shares or any transaction described in Section 12(a)), the Administrator may, in its sole discretion, provide (i) that Options will be settled in cash rather than Common Stock, (ii) that Options will become immediately vested and exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that Options will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, (iv) that outstanding Options may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Common Stock, as of a specified date associated with the transaction, over the exercise price of the Option, or (v) any combination of the foregoing. The Administrator's determination need not be uniform and may be different for different Optionees whether or not such Optionees are similarly situated.

(d) Change in Control. In the event of a Change in Control, the unexercised portion of each Option then outstanding shall become wholly vested and immediately exercisable.

(e) General. Any discretionary adjustments made pursuant to this Section 12 shall be subject to the provisions of Section 14.

13. Date of Grant. The date of grant of an Option shall be, for all purposes, the date on which the Administrator makes the determination granting such Option, or such other later date as is determined by the Administrator. Notice of the determination shall be provided to each Optionee within a reasonable time after the date of such grant.

14. Amendment and Termination of the Plan and Outstanding Options.

(a) Amendment and Termination. The Board may at any time amend, alter, suspend, or terminate the Plan without shareholder approval; provided, however, that the Board may condition any amendment or modification on the approval of shareholders of the Company if such approval is necessary or deemed advisable with respect to tax, securities or other applicable laws, policies or regulations.

(b) Effect of Amendment or Termination. No amendment, alteration, suspension, or termination of the Plan or any outstanding Option shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company.

(c) Shareholder Approval Required for Certain Actions. The original term of any Option may not be extended without the prior approval of the shareholders of the Company. Except as otherwise provided in Section 12, the exercise price of any Option may not be reduced, directly or indirectly, without the prior approval of the shareholders of the Company.

(c) Compliance Amendments. Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, the Committee may amend the Plan or any Notice of Grant, Option Agreement or other applicable agreement, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan, Notice of Grant, Option Agreement or other applicable agreement to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder. By accepting an Option under this Plan, a Optionee agrees to any amendment made pursuant to this Section to any Option granted under the Plan without further consideration or action.

15. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares shall comply with all relevant provisions of law, including, without limitation, the Securities Act of 1933, as amended, the Exchange Act, the rules and regulations promulgated thereunder, Applicable Laws, and the requirements of any stock exchange or quotation system upon which the Shares may then be listed or quoted, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

(b) Investment Representations. As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

16. Liability of Company.

(a) Inability to Obtain Authority. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any

liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

(b) Grants Exceeding Allotted Shares. If the Optioned Stock covered by an Option exceeds, as of the date of grant, the number of Shares which may be issued under the Plan, such Option shall be void with respect to such excess Optioned Stock, unless approval of an amendment sufficiently increasing the number of shares subject to the Plan is timely obtained.

17. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

18. Restriction on Repricing. Without the prior approval of the shareholders of the Company, the Administrator shall not reprice any Options issued under the Plan through cancellation and regrant, by lowering the exercise price, or by any other means.

19. Special Provisions Related To Section 409A of the Code.

(a) Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, to the extent that any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under the Plan or any Notice of Grant, Option Agreement or other applicable agreement by reason of the occurrence of a Change in Control, or the Optionee’s Disability or separation from service, such amount or benefit will not be payable or distributable to the Optionee by reason of such circumstance unless (i) the circumstances giving rise to such Change in Control, Disability or separation from service meet any description or definition of “change in control event”, “disability” or “separation from service”, as the case may be, in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. This provision does not prohibit the *vesting* of any Option upon a Change in Control, Disability or separation from service, however defined. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the next earliest payment or distribution date or event specified in the Notice of Grant, Option Agreement or other applicable agreement that is permissible under Section 409A.

(b) If any one or more Options granted under the Plan to a Optionee could qualify for any separation pay exemption described in Treas. Reg. Section 1.409A-1(b) (9), but such Options in the aggregate exceed the dollar limit permitted for the separation pay exemptions, the Company (acting through the Committee or the Head of Human Resources) shall determine which Options or portions thereof will be subject to such exemptions.

(c) Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, if any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under this Plan or in any Notice of Grant, Option Agreement or other applicable agreement by reason of a Optionee’s separation from service during a period in which the Optionee is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Committee under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes):

(i) if the payment or distribution is payable in a lump sum, the Optionee’s right to receive payment or distribution of such non-exempt deferred compensation will be delayed until the earlier of the Optionee’s death or the first day of the seventh month following the Optionee’s separation from service; and

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(ii) if the payment or distribution is payable over time, the amount of such non-exempt deferred compensation that would otherwise be payable during the six-month period immediately following the Optionee's separation from service will be accumulated and the Optionee's right to receive payment or distribution of such accumulated amount will be delayed until the earlier of the Optionee's death or the first day of the seventh month following the Optionee's separation from service, whereupon the accumulated amount will be paid or distributed to the Optionee and the normal payment or distribution schedule for any remaining payments or distributions will resume.

For purposes of this Plan, the term "Specified Employee" has the meaning given such term in Code Section 409A and the final regulations thereunder, *provided, however*, that, as permitted in such final regulations, the Company's Specified Employees and its application of the six-month delay rule of Code Section 409A(a)(2)(B)(i) shall be determined in accordance with rules adopted by the Board or any committee of the Board, which shall be applied consistently with respect to all nonqualified deferred compensation arrangements of the Company, including this Plan.

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**MICRON TECHNOLOGY, INC.
2004 EQUITY INCENTIVE PLAN**

**ARTICLE 1
PURPOSE**

1.1. **GENERAL.** The purpose of the Micron Technology, Inc. 2004 Equity Incentive Plan (the “Plan”) is to promote the success, and enhance the value, of Micron Technology, Inc. (the “Company”), by linking the personal interests of employees, officers, directors and consultants of the Company or any Affiliate (as defined below) to those of Company stockholders and by providing such persons with an incentive for outstanding performance. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of employees, officers, directors and consultants upon whose judgment, interest, and special effort the successful conduct of the Company’s operation is largely dependent. Accordingly, the Plan permits the grant of incentive awards from time to time to selected employees, officers, directors and consultants of the Company and its Affiliates.

**ARTICLE 2
DEFINITIONS**

2.1. **DEFINITIONS.** When a word or phrase appears in this Plan with the initial letter capitalized, and the word or phrase does not commence a sentence, the word or phrase shall generally be given the meaning ascribed to it in this Section or in Section 1.1 unless a clearly different meaning is required by the context. The following words and phrases shall have the following meanings:

- (a) “Affiliate” means (i) any Subsidiary or Parent, or (ii) an entity that directly or through one or more intermediaries controls, is controlled by or is under common control with, the Company, as determined by the Committee.
- (b) “Award” means any Option, Stock Appreciation Right, Restricted Stock Award, Restricted Stock Unit Award, Deferred Stock Unit Award, Performance Share, Dividend Equivalent Award, or Other Stock-Based Award granted to a Participant under the Plan.
- (c) “Award Certificate” means a written document, in such form as the Committee prescribes from time to time, setting forth the terms and conditions of an Award. Award Certificates may be in the form of individual award agreements or certificates or a program document describing the terms and provisions of an Awards or series of Awards under the Plan.
- (d) “Board” means the Board of Directors of the Company.
- (e) “Change in Control” means and includes the occurrence of any one of the following events:
 - (i) individuals who, on the Effective Date, constitute the Board of Directors of the Company (the “Incumbent Directors”) cease for any reason to constitute at least a majority of such Board, provided that any person becoming a director after the Effective Date and whose election or nomination for election was approved by a vote of at least a majority of the Incumbent Directors then on the Board shall be an Incumbent Director; provided, however, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to the election or removal of directors (“Election Contest”) or other actual or threatened solicitation of proxies or consents by or on behalf of any Person other than the Board (“Proxy Contest”), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest, shall be deemed an Incumbent Director; or
 - (ii) any person is or becomes a “beneficial owner” (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of either (A) 35% or more of the then-outstanding shares of common stock of the Company (“Company Common Stock”) or (B) securities of the Company representing 35% or more of the combined voting power of the Company’s then outstanding

securities eligible to vote for the election of directors (the “Company Voting Securities”); provided, however, that for purposes of this subsection (ii), the following acquisitions shall not constitute a Change in Control: (w) an acquisition directly from the Company, (x) an acquisition by the Company or a Subsidiary of the Company, (y) an acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary of the Company, or (z) an acquisition pursuant to a Non-Qualifying Transaction (as defined in subsection (iii) below); or

(iii) the consummation of a reorganization, merger, consolidation, statutory share exchange or similar form of corporate transaction involving the Company or a Subsidiary (a “Reorganization”), or the sale or other disposition of all or substantially all of the Company’s assets (a “Sale”) or the acquisition of assets or stock of another corporation (an “Acquisition”), unless immediately following such Reorganization, Sale or Acquisition: (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Company Common Stock and outstanding Company Voting Securities immediately prior to such Reorganization, Sale or Acquisition beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Reorganization, Sale or Acquisition (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company’s assets or stock either directly or through one or more subsidiaries, the “Surviving Corporation”) in substantially the same proportions as their ownership, immediately prior to such Reorganization, Sale or Acquisition, of the outstanding Company Common Stock and the outstanding Company Voting Securities, as the case may be, and (B) no person (other than (x) the Company or any Subsidiary of the Company, (y) the Surviving Corporation or its ultimate parent corporation, or (z) any employee benefit plan or related trust) sponsored or maintained by any of the foregoing is the beneficial owner, directly or indirectly, of 35% or more of the total common stock or 35% or more of the total voting power of the outstanding voting securities eligible to elect directors of the Surviving Corporation, and (C) at least a majority of the members of the board of directors of the Surviving Corporation were Incumbent Directors at the time of the Board’s approval of the execution of the initial agreement providing for such Reorganization, Sale or Acquisition (any Reorganization, Sale or Acquisition which satisfies all of the criteria specified in (A), (B) and (C) above shall be deemed to be a “Non-Qualifying Transaction”); or

(iv) approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

(f) “Code” means the Internal Revenue Code of 1986, as amended from time to time, and includes a reference to the underlying final regulations. Reference to a specific Section of the Code or regulation thereunder shall include such Section or regulation, any valid regulation promulgated under such Section, and any comparable provision of any future law, legislation or regulation amending, supplementing or superseding such Section or regulation.

(g) “Committee” means the committee of the Board described in Article 4.

(h) “Company” means Micron Technology, Inc., a Delaware corporation, or any successor corporation.

(i) “Continuous Status as a Participant” means the absence of any interruption or termination of service as an employee, officer, consultant or director of the Company or any Affiliate, as applicable; provided, however, that for purposes of an Incentive Stock Option, or a Stock Appreciation Right issued in tandem with an Incentive Stock Option, “Continuous Status as a Participant” means the absence of any interruption or termination of service as an employee of the Company or any Parent or Subsidiary, as applicable, pursuant to applicable tax regulations. Continuous Status as a Participant shall not be considered interrupted in the case of any leave of absence authorized in writing by the Company prior to its commencement; provided, however, that for purposes of Incentive Stock Options, no such leave may exceed 90 days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If

reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, on the 91st day of such leave any Incentive Stock Option held by the Participant shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

(j) "Covered Employee" means a covered employee as defined in Code Section 162(m)(3).

(k) "Disability" or "Disabled" has the same meaning as provided in the long-term disability plan or policy maintained by the Company or if applicable, most recently maintained, by the Company or if applicable, an Affiliate, for the Participant, whether or not such Participant actually receives disability benefits under such plan or policy. If no long-term disability plan or policy was ever maintained on behalf of Participant or if the determination of Disability relates to an Incentive Stock Option, or a Stock Appreciation Right issued in tandem with an Incentive Stock Option, Disability means Permanent and Total Disability as defined in Section 22(e)(3) of the Code. Notwithstanding the foregoing, for any Awards that constitute a nonqualified deferred compensation plan within the meaning of Section 409A(d) of the Code, Disability has the meaning given such term in Section 409A of the Code. In the event of a dispute, the determination whether a Participant is Disabled will be made by the Committee and may be supported by the advice of a physician competent in the area to which such Disability relates.

(l) "Deferred Stock Unit" means a right granted to a Participant under Article 11.

(m) "Dividend Equivalent" means a right granted to a Participant under Article 12.

(n) "Effective Date" has the meaning assigned such term in Section 3.1.

(o) "Eligible Participant" means an employee, officer, consultant or director of the Company or any Affiliate.

(p) "Exchange" means the New York Stock Exchange or any other national securities exchange or national market system on which the Stock may from time to time be listed or traded.

(q) "Fair Market Value" of the Stock, on any date, means: (i) if the Stock is listed or traded on any Exchange, the average closing price for such Stock (or the closing bid, if no sales were reported) as quoted on such Exchange (or the Exchange with the greatest volume of trading in the Stock) for the last market trading day prior to the day of determination, as reported by *Bloomberg L.P.* or such other source as the Committee deems reliable; (ii) if the Stock is quoted on the over-the-counter market or is regularly quoted by a recognized securities dealer, but selling prices are not reported, the Fair Market Value of the Stock shall be the mean between the high bid and low asked prices for the Stock on the last market trading day prior to the day of determination, as reported by *Bloomberg L.P.* or such other source as the Committee deems reliable, or (iii) in the absence of an established market for the Stock, the Fair Market Value shall be determined by such other method as the Committee determines in good faith to be reasonable and in compliance with Code Section 409A.

(r) "Full Value Award" means an Award other than in the form of an Option or SAR, and which is settled by the issuance of Stock.

(s) "Grant Date" of an Award means the first date on which all necessary corporate action has been taken to approve the grant of the Award as provided in the Plan, or such later date as is determined and specified as part of that authorization process. Notice of the grant shall be provided to the grantee within a reasonable time after the Grant Date.

(t) "Incentive Stock Option" means an Option that is intended to be an incentive stock option and meets the requirements of Section 422 of the Code or any successor provision thereto.

(u) "Non-Employee Director" means a director of the Company who is not a common law employee of the Company or an Affiliate.

(v) “Nonstatutory Stock Option” means an Option that is not an Incentive Stock Option.

(w) “Option” means a right granted to a Participant under Article 7 of the Plan to purchase Stock at a specified price during specified time periods. An Option may be either an Incentive Stock Option or a Nonstatutory Stock Option.

(x) “Other Stock-Based Award” means a right, granted to a Participant under Article 13 that relates to or is valued by reference to Stock or other Awards relating to Stock.

(y) “Parent” means a corporation, limited liability company, partnership or other entity which owns or beneficially owns a majority of the outstanding voting stock or voting power of the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Parent shall have the meaning set forth in Section 424(e) of the Code.

(z) “Participant” means a person who, as an employee, officer, director or consultant of the Company or any Affiliate, has been granted an Award under the Plan; provided that in the case of the death of a Participant, the term “Participant” refers to a beneficiary designated pursuant to Section 14.5 or the legal guardian or other legal representative acting in a fiduciary capacity on behalf of the Participant under applicable state law and court supervision.

(aa) “Performance Share” means any right granted to a Participant under Article 9 to a unit to be valued by reference to a designated number of Shares to be paid upon achievement of such performance goals as the Committee establishes with regard to such Performance Share.

(bb) “Person” means any individual, entity or group, within the meaning of Section 3(a)(9) of the 1934 Act and as used in Section 13(d)(3) or 14(d)(2) of the 1934 Act.

(cc) “Plan” means the Micron Technology, Inc. 2004 Equity Incentive Plan, as amended from time to time.

(dd) “Public Offering” shall occur on closing date of a public offering of any class or series of the Company’s equity securities pursuant to a registration statement filed by the Company under the 1933 Act.

(ee) “Qualified Performance-Based Award” means an Award that is either (i) intended to qualify for the Section 162(m) Exemption and is made subject to performance goals based on Qualified Business Criteria as set forth in Section 14.10(b), or (ii) an Option or SAR.

(ff) “Qualified Business Criteria” means one or more of the Business Criteria listed in Section 14.10(b) upon which performance goals for certain Qualified Performance-Based Awards may be established by the Committee.

(gg) “Restricted Stock Award” means Stock granted to a Participant under Article 10 that is subject to certain restrictions and to risk of forfeiture.

(hh) “Restricted Stock Unit Award” means the right granted to a Participant under Article 10 to receive shares of Stock (or the equivalent value in cash or other property if the Committee so provides) in the future, which right is subject to certain restrictions and to risk of forfeiture.

(ii) “Section 162(m) Exemption” means the exemption from the limitation on deductibility imposed by Section 162(m) of the Code that is set forth in Section 162(m)(4)(C) of the Code or any successor provision thereto.

(jj) “Shares” means shares of the Company’s Stock. If there has been an adjustment or substitution pursuant to Section 15.1, the term “Shares” shall also include any shares of stock or other securities that are substituted for Shares or into which Shares are adjusted pursuant to Section 15.1.

(kk) “Stock” means the \$.10 par value common stock of the Company and such other securities of the Company as may be substituted for Stock pursuant to Article 15.

(ll) “Stock Appreciation Right” or “SAR” means a right granted to a Participant under Article 8 to receive a payment equal to the difference between the Fair Market Value of a Share as of the date of exercise of the SAR over the base price of the SAR, all as determined pursuant to Article 8.

(mm) “Subsidiary” means any corporation, limited liability company, partnership or other entity of which a majority of the outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Subsidiary shall have the meaning set forth in Section 424(f) of the Code.

(nn) “1933 Act” means the Securities Act of 1933, as amended from time to time.

(oo) “1934 Act” means the Securities Exchange Act of 1934, as amended from time to time.

ARTICLE 3 EFFECTIVE TERM OF PLAN

3.1. **EFFECTIVE DATE.** The Plan shall be effective as of the date it is approved by both the Board and the stockholders of the Company (the “Effective Date”).

3.2. **TERMINATION OF PLAN.** The Plan shall terminate on the tenth anniversary of the Effective Date unless earlier terminated as provided herein. The termination of the Plan on such date shall not affect the validity of any Award outstanding on the date of termination.

ARTICLE 4 ADMINISTRATION

4.1. **COMMITTEE.** The Plan shall be administered by a Committee appointed by the Board (which Committee shall consist of at least two directors) or, at the discretion of the Board from time to time, the Plan may be administered by the Board. It is intended that at least two of the directors appointed to serve on the Committee shall be “non-employee directors” (within the meaning of Rule 16b-3 promulgated under the 1934 Act) and “outside directors” (within the meaning of Code Section 162(m)) and that any such members of the Committee who do not so qualify shall abstain from participating in any decision to make or administer Awards that are made to Eligible Participants who at the time of consideration for such Award (i) are persons subject to the short-swing profit rules of Section 16 of the 1934 Act, or (ii) are reasonably anticipated to become Covered Employees during the term of the Award. However, the mere fact that a Committee member shall fail to qualify under either of the foregoing requirements or shall fail to abstain from such action shall not invalidate any Award made by the Committee which Award is otherwise validly made under the Plan. The members of the Committee shall be appointed by, and may be changed at any time and from time to time in the discretion of, the Board. The Board may reserve to itself any or all of the authority and responsibility of the Committee under the Plan or may act as administrator of the Plan for any and all purposes. To the extent the Board has reserved any authority and responsibility or during any time that the Board is acting as administrator of the Plan, it shall have all the powers of the Committee hereunder, and any reference herein to the Committee (other than in this Section 4.1) shall include the Board. To the extent any action of the Board under the Plan conflicts with actions taken by the Committee, the actions of the Board shall control.

4.2. **ACTION AND INTERPRETATIONS BY THE COMMITTEE.** For purposes of administering the Plan, the Committee may from time to time adopt rules, regulations, guidelines and procedures for carrying out the provisions and purposes of the Plan and make such other determinations, not inconsistent with the Plan, as the

Committee may deem appropriate. The Committee's interpretation of the Plan, any Awards granted under the Plan, any Award Certificate and all decisions and determinations by the Committee with respect to the Plan are final, binding, and conclusive on all parties. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Affiliate, the Company's or an Affiliate's independent certified public accountants, Company counsel or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

4.3. **AUTHORITY OF COMMITTEE.** Except as provided below, the Committee has the exclusive power, authority and discretion to:

- (a) Grant Awards;
- (b) Designate Participants;
- (c) Determine the type or types of Awards to be granted to each Participant;
- (d) Determine the number of Awards to be granted and the number of Shares or dollar amount to which an Award will relate;
- (e) Determine the terms and conditions of any Award granted under the Plan, including but not limited to, the exercise price, base price, or purchase price, any restrictions or limitations on the Award, any schedule for lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, based in each case on such considerations as the Committee in its sole discretion determines;
- (f) Accelerate the vesting, exercisability or lapse of restrictions of any outstanding Award, in accordance with Article 14, based in each case on such considerations as the Committee in its sole discretion determines;
- (g) Determine whether, to what extent, and under what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Stock, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;
- (h) Prescribe the form of each Award Certificate, which need not be identical for each Participant;
- (i) Decide all other matters that must be determined in connection with an Award;
- (j) Establish, adopt or revise any rules, regulations, guidelines or procedures as it may deem necessary or advisable to administer the Plan;
- (k) Make all other decisions and determinations that may be required under the Plan or as the Committee deems necessary or advisable to administer the Plan;
- (l) Amend the Plan or any Award Certificate as provided herein; and
- (m) Adopt such modifications, procedures, and subplans as may be necessary or desirable to comply with provisions of the laws of non-U.S. jurisdictions in which the Company or any Affiliate may operate, in order to assure the viability of the benefits of Awards granted to participants located in such other jurisdictions and to meet the objectives of the Plan.

Notwithstanding the foregoing, grants of Awards to Non-Employee Directors hereunder shall be made only in accordance with the terms, conditions and parameters of a plan, program or policy for the compensation of Non-Employee Directors as in effect from time to time, and the Committee may not make discretionary grants hereunder to Non-Employee Directors.

Notwithstanding the above, the Board or the Committee may, by resolution, expressly delegate to a special committee, consisting of one or more directors who are also officers of the Company, the authority, within specified parameters, to (i) designate officers, employees and/or consultants of the Company or any of its Affiliates to be recipients of Awards under the Plan, and (ii) to determine the number of such Awards to be received by any such Participants; provided, however, that such delegation of duties and responsibilities to an officer of the Company may not be made with respect to the grant of Awards to eligible participants (a) who are subject to Section 16(a) of the 1934 Act at the Grant Date, or (b) who as of the Grant Date are reasonably anticipated to become Covered Employees during the term of the Award. The acts of such delegates shall be treated hereunder as acts of the Board and such delegates shall report regularly to the Board and the Compensation Committee regarding the delegated duties and responsibilities and any Awards so granted.

4.4. AWARD CERTIFICATES. Each Award shall be evidenced by an Award Certificate. Each Award Certificate shall include such provisions, not inconsistent with the Plan, as may be specified by the Committee.

ARTICLE 5 SHARES SUBJECT TO THE PLAN

5.1. NUMBER OF SHARES. Subject to adjustment as provided in Sections 5.2 and 15.1, the aggregate number of Shares reserved and available for issuance pursuant to Awards granted under the Plan shall be 26,000,000; provided, however, that each Share issued under the Plan pursuant to a Full Value Award shall reduce the number of available Shares by two (2) shares. The maximum number of Shares that may be issued upon exercise of Incentive Stock Options granted under the Plan shall be 2,000,000.

5.2. SHARE COUNTING.

(a) To the extent that an Award is canceled, terminates, expires, is forfeited or lapses for any reason, any unissued Shares subject to the Award will again be available for issuance pursuant to Awards granted under the Plan.

(b) Shares subject to Awards settled in cash will again be available for issuance pursuant to Awards granted under the Plan.

(c) If the exercise price of an Option is satisfied by delivering Shares to the Company (by either actual delivery or attestation), only the number of Shares issued in excess of the delivery or attestation (less any shares delivered by the optionee to satisfy an applicable tax withholding obligation) shall be considered for purposes of determining the number of Shares remaining available for issuance pursuant to Awards granted under the Plan.

(d) To the extent that the full number of Shares subject to an Option is not issued upon exercise of the Option for any reason, only the number of Shares issued and delivered upon exercise of the Option shall be considered for purposes of determining the number of Shares remaining available for issuance pursuant to Awards granted under the Plan. Nothing in this subsection shall imply that any particular type of cashless exercise of an Option is permitted under the Plan, that decision being reserved to the Committee or other provisions of the Plan.

5.3. STOCK DISTRIBUTED. Any Stock distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Stock, treasury Stock or Stock purchased on the open market.

5.4. LIMITATION ON AWARDS. Notwithstanding any provision in the Plan to the contrary (but subject to adjustment as provided in Section 15.1), the maximum number of Shares with respect to one or more Options and/or SARs that may be granted during any one calendar year under the Plan to any one Participant shall be 2,000,000. The maximum aggregate grant with respect to Awards of Restricted Stock, Restricted Stock Units, Deferred Stock Units, Performance Shares or other Stock-Based Awards (other than Options or SARs) granted in any one calendar year to any one Participant shall be 2,000,000.

ARTICLE 6

ELIGIBILITY

6.1. GENERAL. Awards may be granted only to Eligible Participants; except that Incentive Stock Options may be granted to only to Eligible Participants who are employees of the Company or a Parent or Subsidiary as defined in Section 424(e) and (f) of the Code. Eligible Participants who are service providers to an Affiliate may be granted Options or SARs under this Plan only if the Affiliate qualifies as an “eligible issuer of service recipient stock” within the meaning of §1.409A-1(b)(5)(iii)(E) of the final regulations under Code Section 409A.

ARTICLE 7 STOCK OPTIONS

7.1. GENERAL. The Committee is authorized to grant Options to Participants on the following terms and conditions:

(a) EXERCISE PRICE. The exercise price per Share under an Option shall be determined by the Committee; provided that the exercise price for any Option shall not be less than the Fair Market Value as of the Grant Date.

(b) TIME AND CONDITIONS OF EXERCISE. The Committee shall determine the time or times at which an Option may be exercised in whole or in part, subject to Section 7.1(d). The Committee shall also determine the performance or other conditions, if any, that must be satisfied before all or part of an Option may be exercised or vested. The Committee may waive any exercise or vesting provisions at any time in whole or in part based upon factors as the Committee may determine in its sole discretion so that the Option becomes exercisable or vested at an earlier date. The Committee may permit an arrangement whereby receipt of Stock upon exercise of an Option is delayed until a specified future date.

(c) PAYMENT. The Committee shall determine the methods by which the exercise price of an Option may be paid, the form of payment, including, without limitation, cash, Shares, or other property (including “cashless exercise” arrangements), and the methods by which Shares shall be delivered or deemed to be delivered to Participants; provided, however, that if Shares are used to pay the exercise price of an Option, such Shares must have been held by the Participant for at least such period of time, if any, as necessary to avoid the recognition of an expense under generally accepted accounting principles as a result of the exercise of the Option.

(d) EXERCISE TERM. In no event may any Option be exercisable for more than ten years from the Grant Date.

(e) SUSPENSION. Any Participant who is also a participant in the Retirement at Micron (“RAM”) Section 401(k) Plan and who requests and receives a hardship distribution from the RAM Plan, is prohibited from making, and must suspend, his or her employee elective contributions and employee contributions including, without limitation on the foregoing, the exercise of any Option granted from the date of receipt by that employee of the RAM hardship distribution.

7.2. INCENTIVE STOCK OPTIONS. The terms of any Incentive Stock Options granted under the Plan must comply with the following additional rules:

(a) EXERCISE PRICE. The exercise price of an Incentive Stock Option shall not be less than the Fair Market Value as of the Grant Date.

(b) LAPSE OF OPTION. Subject to any earlier termination provision contained in the Award Certificate, an Incentive Stock Option shall lapse upon the earliest of the following circumstances; provided, however, that the Committee may, prior to the lapse of the Incentive Stock Option under the circumstances described in subsections (3), (4) or (5) below, provide in writing that the Option will extend

until a later date, but if an Option is so extended and is exercised after the dates specified in subsections (3) and (4) below, it will automatically become a Nonstatutory Stock Option:

- (1) The expiration date set forth in the Award Certificate.
- (2) The tenth anniversary of the Grant Date.
- (3) Three months after termination of the Participant's Continuous Status as a Participant for any reason other than the Participant's Disability or death.
- (4) One year after the Participant's Continuous Status as a Participant by reason of the Participant's Disability.
- (5) One year after the termination of the Participant's death if the Participant dies while employed, or during the three-month period described in paragraph (3) or during the one-year period described in paragraph (4) and before the Option otherwise lapses.

Unless the exercisability of the Incentive Stock Option is accelerated as provided in Article 14, if a Participant exercises an Option after termination of employment, the Option may be exercised only with respect to the Shares that were otherwise vested on the Participant's termination of employment. Upon the Participant's death, any exercisable Incentive Stock Options may be exercised by the Participant's beneficiary, determined in accordance with Section 14.5.

(c) INDIVIDUAL DOLLAR LIMITATION. The aggregate Fair Market Value (determined as of the Grant Date) of all Shares with respect to which Incentive Stock Options are first exercisable by a Participant in any calendar year may not exceed \$100,000.00.

(d) TEN PERCENT OWNERS. No Incentive Stock Option shall be granted to any individual who, at the Grant Date, owns stock possessing more than ten percent of the total combined voting power of all classes of stock of the Company or any Parent or Subsidiary unless the exercise price per share of such Option is at least 110% of the Fair Market Value per Share at the Grant Date and the Option expires no later than five years after the Grant Date.

(e) EXPIRATION OF AUTHORITY TO GRANT INCENTIVE STOCK OPTIONS. No Incentive Stock Option may be granted pursuant to the Plan after the day immediately prior to the tenth anniversary of the date the Plan was adopted by the Board, or the termination of the Plan, if earlier.

(f) RIGHT TO EXERCISE. During a Participant's lifetime, an Incentive Stock Option may be exercised only by the Participant or, in the case of the Participant's Disability, by the Participant's guardian or legal representative.

(g) ELIGIBLE GRANTEES. The Committee may not grant an Incentive Stock Option to a person who is not at the Grant Date an employee of the Company or a Parent or Subsidiary.

ARTICLE 8 STOCK APPRECIATION RIGHTS

8.1. GRANT OF STOCK APPRECIATION RIGHTS. The Committee is authorized to grant Stock Appreciation Rights to Participants on the following terms and conditions:

- (a) RIGHT TO PAYMENT. Upon the exercise of a Stock Appreciation Right, the Participant to whom it is granted has the right to receive the excess, if any, of:
 - (1) The Fair Market Value of one Share on the date of exercise; over

(2) The base price of the Stock Appreciation Right as determined by the Committee, which shall not be less than the Fair Market Value of one Share on the Grant Date.

(b) OTHER TERMS. All awards of Stock Appreciation Rights shall be evidenced by an Award Certificate. The terms, methods of exercise, methods of settlement, form of consideration payable in settlement, and any other terms and conditions of any Stock Appreciation Right shall be determined by the Committee at the time of the grant of the Award and shall be reflected in the Award Certificate.

ARTICLE 9

PERFORMANCE SHARES

9.1. GRANT OF PERFORMANCE SHARES. The Committee is authorized to grant Performance Shares to Participants on such terms and conditions as may be selected by the Committee. The Committee shall have the complete discretion to determine the number of Performance Shares granted to each Participant, subject to Section 5.4, and to designate the provisions of such Performance Shares as provided in Section 4.3. All Performance Shares shall be evidenced by an Award Certificate or a written program established by the Committee, pursuant to which Performance Shares are awarded under the Plan under uniform terms, conditions and restrictions set forth in such written program.

9.2. PERFORMANCE GOALS. The Committee may establish performance goals for Performance Shares which may be based on any criteria selected by the Committee. Such performance goals may be described in terms of Company-wide objectives or in terms of objectives that relate to the performance of the Participant, an Affiliate or a division, region, department or function within the Company or an Affiliate. If the Committee determines that a change in the business, operations, corporate structure or capital structure of the Company or the manner in which the Company or an Affiliate conducts its business, or other events or circumstances render performance goals to be unsuitable, the Committee may modify such performance goals in whole or in part, as the Committee deems appropriate. If a Participant is promoted, demoted or transferred to a different business unit or function during a performance period, the Committee may determine that the performance goals or performance period are no longer appropriate and may (i) adjust, change or eliminate the performance goals or the applicable performance period as it deems appropriate to make such goals and period comparable to the initial goals and period, or (ii) make a cash payment to the participant in amount determined by the Committee. The foregoing two sentences shall not apply with respect to an Award of Performance Shares that is intended to be a Qualified Performance-Based Award.

9.3. RIGHT TO PAYMENT. The grant of a Performance Share to a Participant will entitle the Participant to receive at a specified later time a specified number of Shares, or the equivalent value in cash or other property, if the performance goals established by the Committee are achieved and the other terms and conditions thereof are satisfied. The Committee shall set performance goals and other terms or conditions to payment of the Performance Shares in its discretion which, depending on the extent to which they are met, will determine the number of the Performance Shares that will be earned by the Participant.

9.4. OTHER TERMS. Performance Shares may be payable in cash, Stock, or other property, and have such other terms and conditions as determined by the Committee and reflected in the Award Certificate.

ARTICLE 10

RESTRICTED STOCK AND RESTRICTED STOCK UNIT AWARDS

10.1. GRANT OF RESTRICTED STOCK AND RESTRICTED STOCK UNITS. Subject to the terms and conditions of this Article 10, the Committee is authorized to make Awards of Restricted Stock or Restricted Stock Units to Participants in such amounts and subject to such terms and conditions as may be selected by the Committee. An Award of Restricted Stock or Restricted Stock Units shall be evidenced by an Award Certificate setting forth the terms, conditions, and restrictions applicable to the Award.

10.2. ISSUANCE AND RESTRICTIONS. Restricted Stock or Restricted Stock Units shall be subject to such restrictions on transferability and other restrictions as the Committee may impose (including, without

limitation, limitations on the right to vote Restricted Stock or the right to receive dividends on the Restricted Stock); provided, however, at a minimum, all Restricted Stock and Restricted Stock Units shall be subject to the restrictions set forth in Section 14.4 for a period of no less than (a) one year from the date of award with respect to Restricted Stock or Restricted Stock Units subject to restrictions that lapse based upon satisfaction of performance goals, and (b) three years from the date of award with respect to Restricted Stock or Restricted Stock Units subject to time-based restrictions that lapse based upon one's Continuous Status as a Participant. For avoidance of doubt, nothing in the foregoing shall preclude any applicable restriction, including those set forth in Section 14.4 hereof, from lapsing ratably, including, but not limited to, roughly annual increments over three years, with respect to the Restricted Stock or Restricted Stock Units referred to in Section 10.2(b). Moreover, nothing in the foregoing shall preclude or be interpreted to preclude Awards to Non-employee Directors from containing a period of restriction shorter than that set forth above. Finally, nothing in this Section 10.2 shall be deemed or interpreted to preclude the waiver, lapse or the acceleration of lapse, of any restrictions with respect to Restricted Stock or Restricted Stock Units in accordance with or as permitted by Sections 14.7 through Section 14.9, respectively, Article 15 or any other provision of the Plan. Subject to the remaining terms and conditions of the Plan, these restrictions may lapse separately or in combination at such times, under such circumstances, in such installments, upon the satisfaction of performance goals or otherwise, as the Committee determines at the time of the grant of the Award or thereafter. Except as otherwise provided in an Award Certificate or any special Plan document governing an Award, the Participant shall have all of the rights of a stockholder with respect to the Restricted Stock, and the Participant shall have none of the rights of a stockholder with respect to Restricted Stock Units until such time as Shares of Stock are paid in settlement of the Restricted Stock Units.

10.3. **FORFEITURE.** Except as otherwise determined by the Committee at the time of the grant of the Award or thereafter, upon termination of Continuous Status as a Participant during the applicable restriction period or upon failure to satisfy a performance goal during the applicable restriction period, Restricted Stock or Restricted Stock Units that are at that time subject to restrictions shall be forfeited; provided, however, that the Committee may provide in any Award Certificate, subject to the terms and conditions of the Plan, that restrictions or forfeiture conditions relating to Restricted Stock or Restricted Stock Units will be waived in whole or in part in the event of terminations resulting from specified causes, including, but not limited to, death, Disability, or for the convenience or in the best interests of the Company.

10.4. **DELIVERY OF RESTRICTED STOCK.** Shares of Restricted Stock shall be delivered to the Participant at the time of grant either by book-entry registration or by delivering to the Participant, or a custodian or escrow agent (including, without limitation, the Company or one or more of its employees) designated by the Committee, a stock certificate or certificates registered in the name of the Participant. If physical certificates representing shares of Restricted Stock are registered in the name of the Participant, such certificates must bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

ARTICLE 11 DEFERRED STOCK UNITS

11.1. **GRANT OF DEFERRED STOCK UNITS.** The Committee is authorized to grant Deferred Stock Units to Participants subject to such terms and conditions as may be selected by the Committee. Deferred Stock Units shall entitle the Participant to receive Shares of Stock (or the equivalent value in cash or other property if so determined by the Committee) at a future time as determined by the Committee, or as determined by the Participant within guidelines established by the Committee in the case of voluntary deferral elections. An Award of Deferred Stock Units shall be evidenced by an Award Certificate setting forth the terms and conditions applicable to the Award.

ARTICLE 12 DIVIDEND EQUIVALENTS

12.1. **GRANT OF DIVIDEND EQUIVALENTS.** The Committee is authorized to grant Dividend Equivalents to Participants subject to such terms and conditions as may be selected by the Committee. Dividend Equivalents shall entitle the Participant to receive payments equal to dividends with respect to all or a portion of the number of Shares subject to an Award, as determined by the Committee. The Committee may provide that Dividend Equivalents be paid or distributed when accrued or be deemed to have been reinvested in additional

Shares, or otherwise reinvested. Unless otherwise provided in the applicable Award Certificate, Dividend Equivalents will be paid or distributed no later than the 15th day of the 3rd month following the later of (i) the calendar year in which the corresponding dividends were paid to shareholders, or (ii) the first calendar year in which the Participant's right to such Dividends Equivalents is no longer subject to a substantial risk of forfeiture.

ARTICLE 13

STOCK OR OTHER STOCK-BASED AWARDS

13.1. **GRANT OF STOCK OR OTHER STOCK-BASED AWARDS.** The Committee is authorized, subject to limitations under applicable law, to grant to Participants such other Awards that are payable in, valued in whole or in part by reference to, or otherwise based on or related to Shares, as deemed by the Committee to be consistent with the purposes of the Plan, including without limitation Shares awarded purely as a “bonus” and not subject to any restrictions or conditions, convertible or exchangeable debt securities, other rights convertible or exchangeable into Shares, and Awards valued by reference to book value of Shares or the value of securities of or the performance of specified Parents or Subsidiaries. The Committee shall determine the terms and conditions of such Awards.

ARTICLE 14

PROVISIONS APPLICABLE TO AWARDS

14.1. **STAND-ALONE AND TANDEM AWARDS.** Awards granted under the Plan may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, any other Award granted under the Plan. Subject to Section 16.2, awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

14.2. **TERM OF AWARD.** The term of each Award shall be for the period as determined by the Committee, provided that in no event shall the term of any Incentive Stock Option or a Stock Appreciation Right granted in tandem with the Incentive Stock Option exceed a period of ten years from its Grant Date (or, if Section 7.2(d) applies, five years from its Grant Date).

14.3. **FORM OF PAYMENT FOR AWARDS.** Subject to the terms of the Plan and any applicable law or Award Certificate, payments or transfers to be made by the Company or an Affiliate on the grant or exercise of an Award may be made in such form as the Committee determines at or after the Grant Date, including without limitation, cash, Stock, other Awards, or other property, or any combination, and may be made in a single payment or transfer, in installments, or (except with respect to Options or SARs) on a deferred basis, in each case determined in accordance with rules adopted by, and at the discretion of, the Committee.

14.4. **LIMITS ON TRANSFER.** No right or interest of a Participant in any unexercised or restricted Award may be pledged, encumbered, or hypothecated to or in favor of any party other than the Company or an Affiliate, or shall be subject to any lien, obligation, or liability of such Participant to any other party other than the Company or an Affiliate. No unexercised or restricted Award shall be assignable or transferable by a Participant other than by will or the laws of descent and distribution or, except in the case of an Incentive Stock Option, pursuant to a domestic relations order that would satisfy Section 414(p)(1)(A) of the Code if such Section applied to an Award under the Plan; provided, however, that the Committee may (but need not) permit other transfers where the Committee concludes that such transferability (i) does not result in accelerated taxation, (ii) does not cause any Option intended to be an Incentive Stock Option to fail to be described in Code Section 422(b), and (iii) is otherwise appropriate and desirable, taking into account any factors deemed relevant, including without limitation, state or federal tax or securities laws applicable to transferable Awards.

14.5. **BENEFICIARIES.** Notwithstanding Section 14.4, a Participant may, in the manner determined by the Committee, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with respect to any Award upon the Participant's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights under the Plan is subject to all terms and conditions of the Plan and any Award Certificate applicable to the Participant, except to the extent the Plan and Award Certificate otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Committee. If no beneficiary has been

designated or survives the Participant, payment shall be made to the Participant's estate. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Participant at any time provided the change or revocation is filed with the Committee.

14.6. STOCK CERTIFICATES. All Stock issuable under the Plan is subject to any stop-transfer orders and other restrictions as the Committee deems necessary or advisable to comply with federal or state securities laws, rules and regulations and the rules of any national securities exchange or automated quotation system on which the Stock is listed, quoted, or traded. The Committee may place legends on any Stock certificate or issue instructions to the transfer agent to reference restrictions applicable to the Stock.

14.7. ACCELERATION UPON A CHANGE IN CONTROL. Except as otherwise provided in the Award Certificate or any special Plan document governing an Award, upon the occurrence of a Change in Control, all outstanding Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully exercisable, and all time-based vesting restrictions on outstanding Awards shall lapse. Except as otherwise provided in the Award Certificate or any special Plan document governing an Award, upon the occurrence of a Change in Control, the target payout opportunities attainable under all outstanding performance-based Awards shall be deemed to have been fully earned as of the effective date of the Change in Control based upon an assumed achievement of all relevant performance goals at the "target" level and there shall be prorata payout to Participants within thirty (30) days following the effective date of the Change in Control based upon the length of time within the performance period that has elapsed prior to the Change in Control.

14.8. ACCELERATION UPON DEATH OR DISABILITY. Except as otherwise provided in the Award Certificate or any special Plan document governing an Award, upon the Participant's death or Disability during his or her Continuous Status as a Participant, (i) all of such Participant's outstanding Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully exercisable, (ii) all time-based vesting restrictions on the Participant's outstanding Awards shall lapse, and (iii) the target payout opportunities attainable under all of such Participant's outstanding performance-based Awards shall be deemed to have been fully earned as of the date of termination based upon an assumed achievement of all relevant performance goals at the "target" level and there shall be a prorata payout to the Participant or his or her estate within thirty (30) days following the date of termination based upon the length of time within the performance period that has elapsed prior to the date of termination. Any Awards shall thereafter continue or lapse in accordance with the other provisions of the Plan and the Awards Certificate. To the extent that this provision causes Incentive Stock Options to exceed the dollar limitation set forth in Section 7.2(c), the excess Options shall be deemed to be Nonstatutory Stock Options.

14.9. ACCELERATION FOR ANY OTHER REASON. Regardless of whether an event has occurred as described in Section 14.7 or 14.8 above, and subject to Section 14.11 as to Qualified Performance-Based Awards, the Committee may in its sole discretion at any time determine that all or a portion of a Participant's Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully or partially exercisable, that all or a part of the time-based vesting restrictions on all or a portion of the outstanding Awards shall lapse, and/or that any performance-based criteria with respect to any Awards shall be deemed to be wholly or partially satisfied, in each case, as of such date as the Committee may, in its sole discretion, declare; provided, however, the Committee shall not exercise such discretion with respect to Full Value Awards comprised of Shares of Restricted Stock or Restricted Stock Units which, in the aggregate, exceed five percent (5%) of the aggregate number of Shares reserved and available for issuance pursuant to Awards granted under the Plan; provided, further, that when calculating whether the five percent (5%) maximum has been reached, the Committee shall not count or consider any Shares of Restricted Stock or Restricted Stock Units granted to Non-Employee Directors or regarding which the Committee accelerated vesting rights, waived restrictions or determined performance-based criteria had been satisfied resulting from an event described in Section 14.7, 24.8. Article 15, a Participant's termination of employment or separation from service resulting from death, Disability or for the convenience or in the bests interests of the Company. The Committee may discriminate among Participants and among Awards granted to a Participant in exercising its discretion pursuant to this Section 14.9.

14.10. EFFECT OF ACCELERATION. If an Award is accelerated under Section 14.7, Section 14.8 or Section 14.9, the Committee may, in its sole discretion, provide (i) that the Award will expire after a designated period of time after such acceleration to the extent not then exercised, (ii) that the Award will be settled in cash rather than Stock, (iii) that the Award will be assumed by another party to a transaction giving rise to the

acceleration or otherwise be equitably converted or substituted in connection with such transaction, (iv) that the Award may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Stock, as of a specified date associated with the transaction, over the exercise price of the Award, or (v) any combination of the foregoing. The Committee's determination need not be uniform and may be different for different Participants whether or not such Participants are similarly situated. To the extent that such acceleration causes Incentive Stock Options to exceed the dollar limitation set forth in Section 7.2(c), the excess Options shall be deemed to be Nonstatutory Stock Options.

14.11. QUALIFIED PERFORMANCE-BASED AWARDS.

(a) The provisions of the Plan are intended to ensure that all Options and Stock Appreciation Rights granted hereunder to any Covered Employee shall qualify for the Section 162(m) Exemption; provided that the exercise or base price of such Award is not less than the Fair Market Value of the Shares on the Grant Date.

(b) When granting any other Award, the Committee may designate such Award as a Qualified Performance-Based Award, based upon a determination that the recipient is or may be a Covered Employee with respect to such Award, and the Committee wishes such Award to qualify for the Section 162(m) Exemption. If an Award is so designated, the Committee shall establish performance goals for such Award within the time period prescribed by Section 162(m) of the Code based on one or more of the following Qualified Business Criteria, which may be expressed in terms of Company-wide objectives or in terms of objectives that relate to the performance of an Affiliate or a unit, division, region, department or function within the Company or an Affiliate:

- Gross and/or net revenue (including whether in the aggregate or attributable to specific products)
 - Cost of Goods Sold and Gross Margin
 - Costs and expenses, including Research & Development and Selling, General & Administrative
 - Income (gross, operating, net, etc.)
 - Earnings, including before interest, taxes, depreciation and amortization (whether in the aggregate or on a per share basis)
 - Cash flows and share price
 - Return on investment, capital, equity
 - Manufacturing efficiency (including yield enhancement and cycle time reductions), quality improvements and customer satisfaction
 - Product life cycle management (including product and technology design, development, transfer, manufacturing introduction, and sales price optimization and management)
 - Economic profit or loss
 - Market share
 - Employee retention, compensation, training and development, including succession planning
 - Objective goals consistent with the Participant's specific officer duties and responsibilities, designed to further the financial, operational and other business interests of the Company, including goals and objectives with respect to regulatory compliance matters.

Performance goals with respect to the foregoing Qualified Business Criteria may be specified in absolute terms (including completion of pre-established projects, such as the introduction of specified products), in percentages, or in terms of growth from period to period or growth rates over time as well as measured relative to an established or specially-created performance index of Company competitors, peers or other members of high tech industries. Any member of an index that disappears during a measurement period shall be disregarded for the entire measurement period. Performance Goals need not be based upon an increase or positive result under a business criterion and could include, for example, the maintenance of the status quo or the limitation of economic losses (measured, in each case, by reference to a specific business criterion).

(c) Each Qualified Performance-Based Award (other than an Option or SAR) shall be earned, vested and payable (as applicable) only upon the achievement of performance goals established by the Committee based upon one or more of the Qualified Business Criteria, together with the satisfaction of any other conditions, including the condition as to continued employment as set forth in subsection (g) below, as the Committee may determine to be appropriate; provided, however, that the Committee may provide, in its sole and absolute discretion, either in connection with the grant thereof or by amendment thereafter, that achievement of such performance goals will be waived upon the death or Disability of the Participant, or upon a Change in Control. Performance periods established by the Committee for any such Qualified Performance-Based Award may be as short as ninety (90) days and may be any longer period.

(d) The Committee may provide in any Qualified Performance-Based Award that any evaluation of performance may include or exclude any of the following events that occurs during a performance period: (a) asset write-downs or impairment charges; (b) litigation or claim judgments or settlements; (c) the effect of changes in tax laws, accounting principles or other laws or provisions affecting reported results; (d) accruals for reorganization and restructuring programs; (e) extraordinary nonrecurring items as described in Accounting Principles Board Opinion No. 30 and/or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to stockholders for the applicable year; (f) acquisitions or divestitures; and (g) foreign exchange gains and losses. To the extent such inclusions or exclusions affect Awards to Covered Employees, they shall be prescribed in a form and at a time that meets the requirements of Code Section 162(m) for deductibility.

(e) Any payment of a Qualified Performance-Based Award granted with performance goals pursuant to subsection (c) above shall be conditioned on the written certification of the Committee in each case that the performance goals and any other material conditions were satisfied. Written certification may take the form of a Committee resolution passed by a majority of the Committee at a properly convened meeting or through unanimous action by the Committee via action by written consent. The certification requirement also may be satisfied by a separate writing executed by the Chairman of the Committee, acting in his capacity as such, following the foregoing Committee action or by the Chairman executing approved minutes of the Committee in which such determinations were made. Except as specifically provided in subsection (c), no Qualified Performance-Based Award held by a Covered Employee or an employee who in the reasonable judgment of the Committee may be a Covered Employee on the date of payment, may be amended, nor may the Committee exercise any discretionary authority it may otherwise have under the Plan with respect to a Qualified Performance-Based Award under the Plan, in any manner to waive the achievement of the applicable performance goal based on Qualified Business Criteria or to increase the amount payable pursuant thereto or the value thereof, or otherwise in a manner that would cause the Qualified Performance-Based Award to cease to qualify for the Section 162(m) Exemption.

(f) Section 5.4 sets forth the maximum number of Shares or dollar value that may be granted in any one-year period to a Participant in designated forms of Qualified Performance-Based Awards.

(g) With respect to a Participant who is an officer of the Company, any payment of a Qualified Performance-Based Award granted with performance goals pursuant to subsection (c) above shall be conditioned on the officer having remained continuously employed by the Company or an Affiliate for the entire performance or measurement period, including, as well, through the date of determination and certification of the payment of any such Award pursuant to subsection (e) above (the "Certification Date"). For purposes of the Plan, with respect to any given performance or measurement period, an officer of the Company who (i) terminates employment (regardless of cause) or who otherwise ceases to be an officer, prior to the Certification Date and (ii) who, pursuant to a separate contractual arrangement with the Company is entitled to receive payments from the Company thereunder extending to or beyond such Certification Date as a result of such termination or cessation in officer status, shall be deemed to have been employed by the Company as an officer through the Certification Date for purposes of payment eligibility.

14.12. TERMINATION OF EMPLOYMENT. Whether military, government or other service or other leave of absence shall constitute a termination of employment shall be determined in each case by the Committee at its discretion, and any determination by the Committee shall be final and conclusive. A Participant's Continuous

Status as a Participant shall not be deemed to terminate (i) in a circumstance in which a Participant transfers from the Company to an Affiliate, transfers from an Affiliate to the Company, or transfers from one Affiliate to another Affiliate, or (ii) in the discretion of the Committee as specified at or prior to such occurrence, in the case of a spin-off, sale or disposition of the Participant's employer from the Company or any Affiliate. To the extent that this provision causes Incentive Stock Options to extend beyond three months from the date a Participant is deemed to be an employee of the Company, a Parent or Subsidiary for purposes of Sections 424(e) and 424(f) of the Code, the Options held by such Participant shall be deemed to be Nonstatutory Stock Options.

14.13. **DEFERRAL.** Subject to applicable law, the Committee may permit or require a Participant to defer such Participant's receipt of the payment of cash or the delivery of Shares that would otherwise be due to such Participant by virtue of the exercise of an Option or SAR, the lapse or waiver of restrictions with respect to Restricted Stock or Restricted Stock Units, or the satisfaction of any requirements or goals with respect to Performance Shares, and Other Stock-Based Awards. If any such deferral election is required or permitted, the Board shall, in its sole discretion, establish rules and procedures for such payment deferrals in compliance with Section 409A of the Code and other applicable law.

14.14. **FORFEITURE EVENTS.** The Committee may specify in an Award Certificate that the Participant's rights, payments and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events shall include, but shall not be limited to, termination of employment for cause, violation of material Company or Affiliate policies, breach of noncompetition, confidentiality or other restrictive covenants that may apply to the Participant, or other conduct by the Participant that is detrimental to the business or reputation of the Company or any Affiliate.

14.15. **SUBSTITUTE AWARDS.** The Committee may grant Awards under the Plan in substitution for stock and stock-based awards held by employees of another entity who become employees of the Company or an Affiliate as a result of a merger or consolidation of the former employing entity with the Company or an Affiliate or the acquisition by the Company or an Affiliate of property or stock of the former employing corporation. The Committee may direct that the substitute awards be granted on such terms and conditions as the Committee considers appropriate in the circumstances.

ARTICLE 15

CHANGES IN CAPITAL STRUCTURE

15.1. **MANDATORY ADJUSTMENTS.** Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each outstanding Award, and the number of issued shares of Common Stock which have been authorized for issuance under the Plan but as to which no Awards have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Award, as well as the price per share of Common Stock covered by each such outstanding Award, shall be proportionately adjusted for any increase or decrease in the number of issued shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock or any other increase or decrease in the number of shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been "effected without receipt of consideration." Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding, and conclusive. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in Shares, or a combination or consolidation of the outstanding Stock into a lesser number of Shares, the authorization limits under Section 5.1 and 5.4 shall automatically be adjusted proportionately, and the Shares then subject to each Award shall automatically be adjusted proportionately without any change in the aggregate purchase price therefor. To the extent that any adjustments made pursuant to this Article 15 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options.

15.2 **DISCRETIONARY ADJUSTMENTS.** Upon the occurrence or in anticipation of any corporate event or transaction involving the Company (including, without limitation, any merger, reorganization, recapitalization or combination or exchange of shares or any transaction described in Section 15.1), the Committee may, in its sole discretion, provide (i) that Awards will be settled in cash rather than Stock, (ii) that Awards will

become immediately vested and exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that Awards will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, (iv) that outstanding Awards may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Stock, as of a specified date associated with the transaction, over the exercise price of the Award, (v) that applicable performance targets and performance periods for Awards will be modified, consistent with Code Section 162(m) where applicable, or (vi) any combination of the foregoing. The Committee's determination need not be uniform and may be different for different Participants whether or not such Participants are similarly situated.

15.3 GENERAL. Any discretionary adjustments made pursuant to this Article 15 shall be subject to the provisions of Article 16. To the extent that any adjustments made pursuant to this Article 15 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options.

ARTICLE 16

AMENDMENT, MODIFICATION AND TERMINATION

16.1. AMENDMENT, MODIFICATION AND TERMINATION. The Board or the Committee may, at any time and from time to time, amend, modify or terminate the Plan without stockholder approval; provided, however, that if an amendment to the Plan would, in the reasonable opinion of the Board or the Committee, either (i) materially increase the number of Shares available under the Plan, (ii) expand the types of awards under the Plan, (iii) materially expand the class of participants eligible to participate in the Plan, (iv) materially extend the term of the Plan, or (v) otherwise constitute a material change requiring stockholder approval under applicable laws, policies or regulations or the applicable listing or other requirements of an Exchange, then such amendment shall be subject to stockholder approval; and provided, further, that the Board or Committee may condition any other amendment or modification on the approval of stockholders of the Company for any reason, including by reason of such approval being necessary or deemed advisable to (i) permit Awards made hereunder to be exempt from liability under Section 16(b) of the 1934 Act, (ii) to comply with the listing or other requirements of an Exchange, or (iii) to satisfy any other tax, securities or other applicable laws, policies or regulations.

16.2. AWARDS PREVIOUSLY GRANTED. At any time and from time to time, the Committee may amend, modify or terminate any outstanding Award without approval of the Participant; provided, however:

(a) Subject to the terms of the applicable Award Certificate, such amendment, modification or termination shall not, without the Participant's consent, reduce or diminish the value of such Award determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment or termination (with the per-share value of an Option or Stock Appreciation Right for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment or termination over the exercise or base price of such Award);

(b) The original term of an Option may not be extended without the prior approval of the stockholders of the Company;

(c) Except as otherwise provided in Article 15, the exercise price of an Option may not be reduced, directly or indirectly, without the prior approval of the stockholders of the Company; and

(d) No termination, amendment, or modification of the Plan shall adversely affect any Award previously granted under the Plan, without the written consent of the Participant affected thereby. An outstanding Award shall not be deemed to be "adversely affected" by a Plan amendment if such amendment would not reduce or diminish the value of such Award determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment (with the per-share value of an Option or Stock Appreciation Right for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment over the exercise or base price of such Award).

16.3. COMPLIANCE AMENDMENTS. Notwithstanding anything in the Plan or in any Award Certificate to the contrary, the Committee may amend the Plan or an Award Certificate, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan or Award Certificate to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder. By accepting an Award under this Plan, a Participant agrees to any amendment made pursuant to this Section 16.3 to any Award granted under the Plan without further consideration or action.

ARTICLE 17 GENERAL PROVISIONS

17.1. NO RIGHTS TO AWARDS; NON-UNIFORM DETERMINATIONS. No Participant or any Eligible Participant shall have any claim to be granted any Award under the Plan. Neither the Company, its Affiliates nor the Committee is obligated to treat Participants or Eligible Participants uniformly, and determinations made under the Plan may be made by the Committee selectively among Eligible Participants who receive, or are eligible to receive, Awards (whether or not such Eligible Participants are similarly situated).

17.2. NO STOCKHOLDER RIGHTS. No Award gives a Participant any of the rights of a stockholder of the Company unless and until Shares are in fact issued to such person in connection with such Award.

17.3. SPECIAL PROVISIONS RELATED TO SECTION 409A OF THE CODE.

(a) Notwithstanding anything in the Plan or in any Award Certificate to the contrary, to the extent that any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under the Plan or any Award Certificate by reason of the occurrence of a Change in Control, or the Participant’s Disability or separation from service, such amount or benefit will not be payable or distributable to the Participant by reason of such circumstance unless (i) the circumstances giving rise to such Change in Control, Disability or separation from service meet any description or definition of “change in control event”, “disability” or “separation from service”, as the case may be, in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. This provision does not prohibit the vesting of any Award upon a Change in Control, Disability or separation from service, however defined. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the next earliest payment or distribution date or event specified in the Award Certificate that is permissible under Section 409A.

(b) If any one or more Awards granted under the Plan to a Participant could qualify for any separation pay exemption described in Treas. Reg. Section 1.409A-1(b) (9), but such Awards in the aggregate exceed the dollar limit permitted for the separation pay exemptions, the Company (acting through the Committee or the Head of Human Resources) shall determine which Awards or portions thereof will be subject to such exemptions.

(c) Notwithstanding anything in the Plan or in any Award Certificate to the contrary, if any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under this Plan or any Award Certificate by reason of a Participant’s separation from service during a period in which the Participant is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Committee under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes):

(i) if the payment or distribution is payable in a lump sum, the Participant’s right to receive payment or distribution of such non-exempt deferred compensation will be delayed until the earlier of the Participant’s death or the first day of the seventh month following the Participant’s separation from service; and

(ii) if the payment or distribution is payable over time, the amount of such non-exempt deferred compensation that would otherwise be payable during the six-month period immediately following the Participant's separation from service will be accumulated and the Participant's right to receive payment or distribution of such accumulated amount will be delayed until the earlier of the Participant's death or the first day of the seventh month following the Participant's separation from service, whereupon the accumulated amount will be paid or distributed to the Participant and the normal payment or distribution schedule for any remaining payments or distributions will resume.

For purposes of this Plan, the term "Specified Employee" has the meaning given such term in Code Section 409A and the final regulations thereunder, provided, however, that, as permitted in such final regulations, the Company's Specified Employees and its application of the six-month delay rule of Code Section 409A(a)(2)(B)(i) shall be determined in accordance with rules adopted by the Board or any committee of the Board, which shall be applied consistently with respect to all nonqualified deferred compensation arrangements of the Company, including this Plan.

17.4. WITHHOLDING. The Company or any Affiliate shall have the authority and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, and local taxes (including the Participant's FICA obligation) required by law to be withheld with respect to any exercise, lapse of restriction or other taxable event arising as a result of the Plan. If Shares are surrendered to the Company to satisfy withholding obligations in excess of the minimum withholding obligation, such Shares must have been held by the Participant as fully vested shares for such period of time, if any, as necessary to avoid the recognition of an expense under generally accepted accounting principles. The Company shall have the authority to require a Participant to remit cash to the Company in lieu of the surrender of Shares for tax withholding obligations if the surrender of Shares in satisfaction of such withholding obligations would result in the Company's recognition of expense under generally accepted accounting principles. With respect to withholding required upon any taxable event under the Plan, the Committee may, at the time the Award is granted or thereafter, require or permit that any such withholding requirement be satisfied, in whole or in part, by withholding from the Award Shares having a Fair Market Value on the date of withholding equal to the minimum amount (and not any greater amount) required to be withheld for tax purposes, all in accordance with such procedures as the Committee establishes.

17.5. NO RIGHT TO CONTINUED SERVICE. Nothing in the Plan, any Award Certificate or any other document or statement made with respect to the Plan, shall interfere with or limit in any way the right of the Company or any Affiliate to terminate any Participant's employment or status as an officer, director or consultant at any time, nor confer upon any Participant any right to continue as an employee, officer, director or consultant of the Company or any Affiliate, whether for the duration of a Participant's Award or otherwise.

17.6. UNFUNDED STATUS OF AWARDS. The Plan is intended to be an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Award Certificate shall give the Participant any rights that are greater than those of a general creditor of the Company or any Affiliate. This Plan is not intended to be subject to ERISA.

17.7. RELATIONSHIP TO OTHER BENEFITS. No payment under the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or benefit plan of the Company or any Affiliate unless provided otherwise in such other plan.

17.8. EXPENSES. The expenses of administering the Plan shall be borne by the Company and its Affiliates.

17.9. TITLES AND HEADINGS. The titles and headings of the Sections in the Plan are for convenience of reference only, and in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.

17.10. GENDER AND NUMBER. Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular and the singular shall include the plural.

17.11. FRACTIONAL SHARES. No fractional Shares shall be issued and the Committee shall determine, in its discretion, whether cash shall be given in lieu of fractional Shares or whether such fractional Shares shall be eliminated by rounding up or down.

17.12. GOVERNMENT AND OTHER REGULATIONS.

(a) Notwithstanding any other provision of the Plan, no Participant who acquires Shares pursuant to the Plan may, during any period of time that such Participant is an affiliate of the Company (within the meaning of the rules and regulations of the Securities and Exchange Commission under the 1933 Act), sell such Shares, unless such offer and sale is made (i) pursuant to an effective registration statement under the 1933 Act, which is current and includes the Shares to be sold, or (ii) pursuant to an appropriate exemption from the registration requirement of the 1933 Act, such as that set forth in Rule 144 promulgated under the 1933 Act.

(b) Notwithstanding any other provision of the Plan, if at any time the Committee shall determine that the registration, listing or qualification of the Shares covered by an Award upon any Exchange or under any foreign, federal, state or local law or practice, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition of, or in connection with, the granting of such Award or the purchase or receipt of Shares thereunder, no Shares may be purchased, delivered or received pursuant to such Award unless and until such registration, listing, qualification, consent or approval shall have been effected or obtained free of any condition not acceptable to the Committee. Any Participant receiving or purchasing Shares pursuant to an Award shall make such representations and agreements and furnish such information as the Committee may request to assure compliance with the foregoing or any other applicable legal requirements. The Company shall not be required to issue or deliver any certificate or certificates for Shares under the Plan prior to the Committee's determination that all related requirements have been fulfilled. The Company shall in no event be obligated to register any securities pursuant to the 1933 Act or applicable state or foreign law or to take any other action in order to cause the issuance and delivery of such certificates to comply with any such law, regulation or requirement.

17.13. GOVERNING LAW. To the extent not governed by federal law, the Plan and all Award Certificates shall be construed in accordance with and governed by the laws of the State of Delaware.

17.14. ADDITIONAL PROVISIONS. Each Award Certificate may contain such other terms and conditions as the Committee may determine; provided that such other terms and conditions are not inconsistent with the provisions of the Plan.

17.15. NO LIMITATIONS ON RIGHTS OF COMPANY. The grant of any Award shall not in any way affect the right or power of the Company to make adjustments, reclassification or changes in its capital or business structure or to merge, consolidate, dissolve, liquidate, sell or transfer all or any part of its business or assets. The Plan shall not restrict the authority of the Company, for proper corporate purposes, to draft or assume awards, other than under the Plan, to or with respect to any person. If the Committee so directs, the Company may issue or transfer Shares to an Affiliate, for such lawful consideration as the Committee may specify, upon the condition or understanding that the Affiliate will transfer such Shares to a Participant in accordance with the terms of an Award granted to such Participant and specified by the Committee pursuant to the provisions of the Plan.

17.16. INDEMNIFICATION. Each person who is or shall have been a member of the Committee, or of the Board, or an officer of the Company to whom authority was delegated in accordance with Article 4 shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf, unless such loss, cost, liability, or expense is a result of his or her own willful misconduct or except as expressly provided by statute.

The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

MICRON TECHNOLOGY, INC.
1998 NONSTATUTORY STOCK OPTION PLAN

1. Purposes of the Plan. The purposes of this Plan are:

- to attract and retain the best available personnel for positions of substantial responsibility,
- to provide additional incentive to Employees and Consultants, and
- to promote the success of the Company's business.

Nonstatutory stock options may be granted under the Plan.

2. Definitions. As used herein, the following definitions shall apply:

(a) "Administrator" means the Board or any of its Committees as shall be administering the Plan, in accordance with Section 4 of the Plan.

(b) "Affiliate" means (i) any subsidiary or parent company of the Company, or (ii) an entity that directly or through one or more intermediaries controls, is controlled by or is under common control with, the Company, as determined by the Committee.

(c) "Applicable Laws" means the legal requirements relating to the administration of stock option plans and the issuance of stock and stock options under federal and state securities laws, Delaware corporate law, the Code, and the applicable laws of any foreign country or jurisdiction where options will be or are being granted under the Plan.

(d) "Board" means the Board of Directors of the Company.

(e) "Change in Control" means the acquisition by any person or entity, directly, indirectly or beneficially, acting alone or in concert, of more than thirty-five percent (35%) of the Common Stock of the Company outstanding at any time.

(f) "Code" means the Internal Revenue Code of 1986, as amended. Reference to a specific Section of the Code or regulation thereunder shall include such Section or regulation, any valid regulation promulgated under such Section, and any comparable provision of any future law, legislation or regulation amending, supplementing or superseding such Section or regulation.

(g) "Committee" means a Committee appointed by the Board in accordance with Section 4 of the Plan.

(h) "Common Stock" means the Common Stock of the Company.

9/22/2003 change #2 (n)

(i) “Company” means Micron Technology, Inc., a Delaware corporation.

(j) “Consultant” means any person, including an advisor, engaged by the Company or a parent, subsidiary or Affiliate to render services. The term “Consultant” shall not include any person who is also an Officer or Director of the Company.

(k) “Continuous Status as an Employee or Consultant” means that the employment or consulting relationship with the Company, any parent, subsidiary, or Affiliate, is not interrupted or terminated. Continuous Status as an Employee or Consultant shall not be considered interrupted in the case of (i) any leave of absence approved by the Company, (ii) transfers between locations of the Company or between the Company, its Parent, any Subsidiary, or any successor or (iii) change in status from either an Employee to a Consultant or a Consultant to an Employee. A leave of absence approved by the Company shall include sick leave, military leave, or any other personal leave approved by an authorized representative of the Company.

(l) “Director” means a member of the Board.

(m) “Disability” means total and permanent disability as defined in Section 22(e)(3) of the Code. Notwithstanding the foregoing, for any Options that constitute a nonqualified deferred compensation plan within the meaning of Section 409A(d) of the Code, “Disability” has the meaning given such term in Section 409A of the Code.

(n) “Employee” means any person, except Officers and Directors, employed by the Company or any parent, subsidiary or Affiliate of the Company.

(o) “Fair Market Value” of the Stock, on any date, means: (i) if the Stock is listed or traded on any Exchange, the average closing price for such Stock (or the closing bid, if no sales were reported) as quoted on such Exchange (or, if more than one Exchange, the Exchange with the greatest volume of trading in the Stock) for such date, or if no sales or bids were reported for such date, on the last market trading day prior to the day of determination, as reported by *Market Sweep*, a service from Interactive Data Services, Inc., or or such other source as the Committee deems reliable; (ii) if the Stock is quoted on the over-the-counter market or is regularly quoted by a recognized securities dealer, but selling prices are not reported, the Fair Market Value of the Stock shall be the mean between the high bid and low asked prices for the Stock on such date, or if no sales or bids were reported for such date, on the last market trading day prior to the day of determination, as reported by *Market Sweep*, a service from Interactive Data Services, Inc., or such other source as the Committee deems reliable, or (iii) in the absence of an established market for the Stock, the Fair Market Value shall be determined by such other method as the Committee determines in good faith to be reasonable and in compliance with Code Section 409A.

(p) “Notice of Grant” means a written notice evidencing certain terms and conditions of an individual Option grant. The Notice of Grant is subject to the terms and conditions of the Option Agreement.

9/22/2003 change #2 (n)

(q) “Officer” means a person who is an officer of the Company within the meaning of Section 16 of the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(r) “Option” means a nonstatutory stock option granted pursuant to the Plan. Such option is not intended to qualify as an incentive stock option within the meaning of Section 422 of the Code and the regulations promulgated thereunder.

(s) “Option Agreement” means a written agreement between the Company and an Optionee evidencing the terms and conditions of an individual Option grant. The Option Agreement is subject to the terms and conditions of the Plan.

(t) “Option Exchange Program” means a program whereby outstanding options are surrendered in exchange for options with a lower exercise price.

(u) “Optioned Stock” means the Common Stock subject to an Option.

(v) “Optionee” means an Employee or Consultant who holds an outstanding Option.

(w) “Plan” means this Nonstatutory Stock Option Plan.

(x) “Share” means a share of the Common Stock, as adjusted in accordance with Section 12 of the Plan.

3. Stock Subject to the Plan. Subject to the provisions of Section 12 of the Plan, the maximum aggregate number of Shares which may be optioned and sold under the Plan is 1,750,000. The Shares may be authorized, but unissued, or reacquired Common Stock.

If an Option expires or becomes unexercisable without having been exercised in full, or is surrendered pursuant to an Option Exchange Program, the unpurchased Shares which were subject thereto shall become available for future grant or sale under the Plan (unless the Plan has terminated).

4. Administration of the Plan.

(a) Procedure. The Plan shall be administered by (A) the Board or (B) a committee designated by the Board, which committee shall be constituted to satisfy Applicable Laws. Once appointed, such Board may increase the size of the Committee and appoint additional members, remove members (with or without cause) and substitute new members, fill vacancies (however caused), and remove all members of the Committee and thereafter directly administer the Plan, all to the extent permitted by Applicable Laws.

(b) Powers of the Administrator. Subject to the provisions of the Plan, and in the case of a Committee, subject to the specific duties delegated by the Board to such Committee, the Administrator shall have the authority, in its discretion:

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- granted hereunder;
- (i) to determine the Fair Market Value of the Common Stock;
 - (ii) to select the Consultants and Employees to whom Options may be
 - (iii) to determine whether and to what extent Options are granted hereunder;
 - (iv) to determine the number of shares of Common Stock to be covered by each Option granted hereunder;
 - (v) to approve forms of agreement for use under the Plan;
 - (vi) to determine the terms and conditions, not inconsistent with the terms of the Plan, of any award granted hereunder. Such terms and conditions include, but are not limited to, the exercise price, the time or times when Options may be exercised (which may be based on performance criteria), any vesting acceleration or waiver of forfeiture restrictions, and any restriction or limitation regarding any Option or the shares of Common Stock relating thereto, based in each case on such factors as the Administrator, in its sole discretion, shall determine;
 - (vii) to reduce the exercise price of any Option to the then current Fair Market Value if the Fair Market Value of the Common Stock covered by such Option shall have declined since the date the Option was granted;
 - (viii) to construe and interpret the terms of the Plan and awards granted pursuant to the Plan;
 - (ix) to prescribe, amend, and rescind rules and regulations relating to the Plan, including rules and regulations relating to sub-plans established for the purpose of qualifying for preferred tax treatment under foreign tax laws;
 - (x) to modify or amend each Option (subject to Section 14(b) of the Plan), including the discretionary authority to extend the post-termination exercisability period of Options longer than is otherwise provided for in the Plan;
 - (xi) to authorize any person to execute on behalf of the Company any instrument required to effect the grant of an Option previously granted by the Administrator;
 - (xii) to institute and Option Exchange Program;
 - (xiii) to allow Optionees to satisfy withholding tax obligations by electing to have the Company withhold from the Shares to be issued upon exercise of an Option that number of Shares having a Fair Market Value equal to the amount required to be withheld; and
 - (xiv) to make all other determinations deemed necessary or advisable for administering the Plan.

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(c) Effect of Administrator's Decision. The Administrator's decisions, determinations, and interpretations shall be final and binding on all Optionees and any other holders of Options.

5. Eligibility. Options may be granted to Employees and Consultants. Employees and Consultants who are service providers to an Affiliate may be granted Options under this Plan only if the Affiliate qualifies as an "eligible issuer of service recipient stock" within the meaning of §1.409A-1(b)(5)(iii)(E) of the final regulations under Code Section 409A.

6. Limitations. Neither the Plan nor any Option shall confer upon an Optionee any right with respect to continuing the Optionee's employment or consulting relationship with the Company, nor shall they interfere in any way with the Optionee's right or the Company's right to terminate such employment or consulting relationship at any time, with or without cause.

7. Term of Plan. The Plan shall become effective upon its adoption by the Board. It shall continue in effect until terminated under Section 14 of the Plan.

8. Term of Option. The term of each Option shall be stated in the Notice of Grant.

9. Option Exercise Price and Consideration.

(a) Exercise Price. The per share exercise price for the Shares to be issued pursuant to exercise of an Option shall be determined by the Administrator, but shall not be less than the Fair Market Value per share on the date of grant of the Option.

(b) Waiting Period and Exercise Dates. At the time an Option is granted, the Administrator shall fix the period within which the Option may be exercised and shall determine any conditions which must be satisfied before the Option may be exercised. In doing so, the Administrator may specify that an Option may not be exercised until either the completion of a service period or the achievement of performance criteria with respect to the Company or the Optionee.

(c) Form of Consideration. The Administrator shall determine the acceptable form of consideration for exercising an Option, including the method of payment. Such consideration may consist entirely of:

(i) cash;

(ii) check;

(iii) promissory note;

(iv) other Shares which have a Fair Market Value on the date of surrender equal to the aggregate exercise price of the Shares as to which said Option shall be exercised;

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(v) delivery of a properly executed exercise notice together with such other documentation as the Administrator and the broker, if applicable, shall require to effect an exercise of the Option and delivery to the Company of the sale or loan proceeds required to pay the exercise price;

(vi) a reduction in the amount of any Company liability to the Optionee, other than any liability attributable to the Optionee's participation in any Company-sponsored deferred compensation program or arrangement;

(vii) any combination of the foregoing methods of payment; or

(viii) such other consideration and method of payment for the issuance of Shares to the extent permitted by Applicable Laws.

10. Exercise of Option.

(a) Procedure for Exercise; Rights as a Shareholder. Any Option granted thereunder shall be exercisable according to the terms of the Plan and at such times and under such conditions as determined by the Administrator and set forth in the Option Agreement.

An Option may not be exercised for a fraction of a Share.

An Option shall be deemed exercised when the Company receives: (i) written notice of exercise (in accordance with the Option Agreement) from the person entitled to exercise the Option, and (ii) full payment for the Shares with respect to which the Option is exercised. Full payment may consist of any consideration and method of payment authorized by the Administrator and permitted by the Option Agreement and the Plan. Shares issued upon exercise of an Option shall be issued in the name of the Optionee or, if requested by the Optionee, in the name of the Optionee and his or her spouse. Until the Shares are issued (as evidenced by the appropriate entry on the books of the Company or of a duly authorized transfer agent of the Company), no right to vote or receive dividends or any other rights as a shareholder shall exist with respect to the Optioned Stock, notwithstanding the exercise of the Option. The Company shall issue (or cause to be issued) such Shares, promptly after the Option is exercised. No adjustment will be made for a dividend or other right for which the record date is prior to the date the Shares are issued, except as provided in Section 12 of the Plan.

Exercising an Option in any manner shall decrease the number of Shares thereafter available, both for purposes of the Plan and for sale under the Option, by the number of Shares as to which the Option is exercised.

(b) Termination of Employment or Consulting Relationship. Upon termination of an Optionee's Continuous Status as an Employee or Consultant, other than upon the Optionee's death or Disability, the Optionee may exercise his or her Option, but only within such period of time as is specified in the Notice of Grant, and only to the extent that the Optionee was entitled to exercise it as the date of termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). In the absence of a specified time in the Notice of Grant, the Option shall remain exercisable for 30 days following the Optionee's termination of Continuous Status as an Employee or Consultant. If,

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at the date of termination, the Optionee is not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(c) Disability of Optionee. In the event that an Optionee's Continuous Status as an Employee or Consultant terminates as a result of the Optionee's Disability, the Optionee may exercise his or her Option at any time within twelve (12) months from the date of such termination, but only to the extent that the Optionee was entitled to exercise it at the date of such termination (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant). If, at the date of termination, the Optionee does not exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall revert to the Plan. If, after termination, the Optionee does not exercise his or her option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(d) Death of Optionee. In the event of the death of an Optionee, the Option may be exercised at any time within twelve (12) months following the date of death (but in no event later than the expiration of the term of such Option as set forth in the Notice of Grant), by the Optionee's estate or by a person who acquired the right to exercise the Option by bequest or inheritance, but only to the extent that the Optionee was entitled to exercise the Option at the date of death. If, at any time of death, the Optionee was not entitled to exercise his or her entire Option, the Shares covered by the unexercisable portion of the Option shall immediately revert to the Plan. If, after death, the Optionee's estate or a person who acquired the right to exercise the Option by bequest or inheritance does not exercise the Option within the time specified herein, the Option shall terminate, and the Shares covered by such Option shall revert to the Plan.

(e) Suspension. Any Optionee who is also a participant in the Retirement at Micron ("RAM") Section 401(k) Plan and who requests and receives a hardship distribution from the RAM Plan, is prohibited from making, and must suspend, his or her employee elective contributions and employee contributions including, without limitation on the foregoing, the exercise of any Option granted from the date of receipt by that employee of the RAM hardship distribution.

11. Non-Transferability of Options. Unless otherwise specified by the Administrator in the Option Agreement, an Option may not be sold, pledged, assigned, hypothecated, transferred, or disposed of in any manner other than by will or by laws of descent or distribution and may be exercised, during the lifetime of the Optionee, only by the Optionee.

12. Adjustments Upon Changes in Capitalization, Dissolution, Merger, or Asset Sale.

(a) Changes in Capitalization. Subject to any required action by the shareholders of the Company, the number of shares of Common Stock covered by each outstanding Option, and the number of issued shares of Common Stock which have been authorized for issuance under the Plan but as to which no Options have yet been granted or which have been returned to the Plan upon cancellation or expiration of an Option, as well as the price per share of Common Stock covered by each such outstanding Option, shall be proportionately adjusted for any increase or decrease in the number of issued

shares of Common Stock resulting from a stock split, reverse stock split, stock dividend, combination or reclassification of the Common Stock or any other increase or decrease in the number of shares of Common Stock effected without receipt of consideration by the Company; provided, however, that conversion of any convertible securities of the Company shall not be deemed to have been effected without receipt of consideration. Such adjustment shall be made by the Board, whose determination in that respect shall be final, binding, and conclusive. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in Shares, or a combination or consolidation of the outstanding Stock into a lesser number of Shares, the authorization limit under Section 3 shall automatically be adjusted proportionately, and the Shares then subject to each Award shall automatically be adjusted proportionately without any change in the aggregate purchase price therefor. To the extent that any adjustments made pursuant to this Section 12 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options.

(b) Dissolution or Liquidation. In the event of the proposed dissolution or liquidation of the Company, to the extent that an Option has not been previously exercised, it will terminate immediately prior to the consummation of such proposed action. The Board may, in the exercise of its sole discretion in such instances, declare that any Option shall terminate as of a date fixed by the Board and give each Optionee the right to exercise his or her Option as to all or any part of the Optioned stock, including Shares as to which the Option would not otherwise be exercisable.

(c) Merger or Asset Sale.

Upon the occurrence or in anticipation of any corporate event or transaction involving the Company (including, without limitation, any merger, reorganization, recapitalization or combination or exchange of shares or any transaction described in Section 12(a)), the Administrator may, in its sole discretion, provide (i) that Options will be settled in cash rather than Common Stock, (ii) that Options will become immediately vested and exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that Options will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, (iv) that outstanding Options may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Common Stock, as of a specified date associated with the transaction, over the exercise price of the Option, or (v) any combination of the foregoing. The Administrator's determination need not be uniform and may be different for different Optionees whether or not such Optionees are similarly situated.

(d) Change in Control. In the event of a Change in Control, the unexercised portion of the Option shall become immediately exercisable.

(e) General. Any discretionary adjustments made pursuant to this Section 12 shall be subject to the provisions of Section 14.

13. Date of Grant. The date of grant of an Option shall be, for all purposes, the date on which the Administrator makes the determination granting such Option, or such other later date as is determined by the Administrator. Notice of the determination shall be provided to each Optionee within a reasonable time after the date of such grant.

14. Amendment and Termination of the Plan.

(a) Amendment and Termination. Except as provided herein, the Board may at any time amend, alter, suspend, or terminate the Plan without shareholder approval; provided, however, that the Board may condition any amendment or modification on the approval of shareholders of the Company if such approval is necessary or deemed advisable with respect to tax, securities or other applicable laws, policies or regulations. No termination can affect options previously granted, nor may an amendment make any change in any option theretofore granted which adversely affects the rights of any Optionee, nor may an amendment be made without prior approval of the shareholders of the Company if such amendment would:

- (i) increase the number of shares that may be issued under the Plan;
- (ii) change the designation of the employees (or class of employees) eligible for participation in the Plan; or
- (iii) materially increase the benefits which may accrue to participants under the Plan..

(b) Effect of Amendment or Termination. No amendment, alteration, suspension, or termination of the Plan shall impair the rights of any Optionee, unless mutually agreed otherwise between the Optionee and the Administrator, which agreement must be in writing and signed by the Optionee and the Company.

(c) Compliance Amendments. Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, the Committee may amend the Plan or any Notice of Grant, Option Agreement or other applicable agreement, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan, Notice of Grant, Option Agreement or other applicable agreement to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder. By accepting an Option under this Plan, a Optionee agrees to any amendment made pursuant to this Section to any Option granted under the Plan without further consideration or action.

15. Conditions Upon Issuance of Shares.

(a) Legal Compliance. Shares shall not be issued pursuant to the exercise of an Option unless the exercise of such Option and the issuance and delivery of such Shares shall comply with all Applicable Laws and the requirements of any stock exchange or quotation system upon which the Shares may then be listed or quoted, and shall be further subject to the approval of counsel for the Company with respect to such compliance.

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(b) Investment Representations. As a condition to the exercise of an Option, the Company may require the person exercising such Option to represent and warrant at the time of any such exercise that the Shares are being purchased only for investment and without any present intention to sell or distribute such Shares if, in the opinion of counsel for the Company, such a representation is required.

16. Liability of Company. The inability of the Company to obtain authority from any regulatory body having jurisdiction, which authority is deemed by the Company's counsel to be necessary to the lawful issuance and sale of any Shares hereunder, shall relieve the Company of any liability in respect of the failure to issue or sell such Shares as to which such requisite authority shall not have been obtained.

17. Reservation of Shares. The Company, during the term of this Plan, will at all times reserve and keep available such number of Shares as shall be sufficient to satisfy the requirements of the Plan.

18. Restriction on Repricing. Without the prior approval of the shareholders of the Company, the Administrator shall not reprice any Options issued under the Plan through cancellation and regrant, by lowering the exercise price, or by any other means.

19. Special Provisions Related To Section 409A of the Code.

(a) Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, to the extent that any amount or benefit that would constitute non-exempt "deferred compensation" for purposes of Section 409A of the Code would otherwise be payable or distributable under the Plan or any Notice of Grant, Option Agreement or other applicable agreement by reason of the occurrence of a Change in Control, or the Optionee's Disability or separation from service, such amount or benefit will not be payable or distributable to the Optionee by reason of such circumstance unless (i) the circumstances giving rise to such Change in Control, Disability or separation from service meet any description or definition of "change in control event", "disability" or "separation from service", as the case may be, in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. This provision does not prohibit the *vesting* of any Option upon a Change in Control, Disability or separation from service, however defined. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the next earliest payment or distribution date or event specified in the Notice of Grant, Option Agreement or other applicable agreement that is permissible under Section 409A.

(b) If any one or more Options granted under the Plan to a Optionee could qualify for any separation pay exemption described in Treas. Reg. Section 1.409A-1(b)(9), but such Options in the aggregate exceed the dollar limit permitted for the separation pay exemptions, the Company (acting through the Committee or the Head of Human Resources) shall determine which Options or portions thereof will be subject to such exemptions.

(c) Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, if any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under this Plan or in any Notice of Grant, Option Agreement or other applicable agreement by reason of a Optionee’s separation from service during a period in which the Optionee is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Committee under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes):

(i) if the payment or distribution is payable in a lump sum, the Optionee’s right to receive payment or distribution of such non-exempt deferred compensation will be delayed until the earlier of the Optionee’s death or the first day of the seventh month following the Optionee’s separation from service; and

(ii) if the payment or distribution is payable over time, the amount of such non-exempt deferred compensation that would otherwise be payable during the six-month period immediately following the Optionee’s separation from service will be accumulated and the Optionee’s right to receive payment or distribution of such accumulated amount will be delayed until the earlier of the Optionee’s death or the first day of the seventh month following the Optionee’s separation from service, whereupon the accumulated amount will be paid or distributed to the Optionee and the normal payment or distribution schedule for any remaining payments or distributions will resume.

For purposes of this Plan, the term “Specified Employee” has the meaning given such term in Code Section 409A and the final regulations thereunder, *provided, however*, that, as permitted in such final regulations, the Company’s Specified Employees and its application of the six-month delay rule of Code Section 409A(a)(2)(B)(i) shall be determined in accordance with rules adopted by the Board or any committee of the Board, which shall be applied consistently with respect to all nonqualified deferred compensation arrangements of the Company, including this Plan.

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LEXAR MEDIA, INC.

2000 EQUITY INCENTIVE PLAN

As Adopted January 21, 2000
As Amended April 20, 2004
As Amended February 10, 2006
As Amended December 11, 2008

1. **PURPOSE.** The purpose of this Plan is to provide incentives to attract, retain and motivate eligible persons whose present and potential contributions are important to the success of the Company, its Parent and Subsidiaries, by offering them an opportunity to participate in the Company's future performance through awards of Options, Restricted Stock and Stock Bonuses. Capitalized terms not defined in the text are defined in Section 23.

2. **SHARES SUBJECT TO THE PLAN.**

2.1 **Number of Shares Available.** Subject to Sections 2.2 and 18, the total number of Shares reserved and available for grant and issuance pursuant to this Plan will be 8,000,000 Shares plus Shares that are subject to: (a) issuance upon exercise of an Option but cease to be subject to such Option for any reason other than exercise of such Option; (b) an Award granted hereunder but are forfeited or are repurchased by the Company at the original issue price; and (c) an Award that otherwise terminates without Shares being issued. In addition, any authorized shares not issued or subject to outstanding grants under the Company's 1996 Stock Option/Stock Issuance Plan (the "**Prior Plan**") on the Effective Date (as defined below) and any shares issued under the Prior Plan that are forfeited or repurchased by the Company or that are issuable upon exercise of options granted pursuant to the Prior Plan that expire or become unexercisable for any reason without having been exercised in full, will no longer be available for grant and issuance under the Prior Plan, but will be available for grant and issuance under this Plan. In addition, on each January 1, the aggregate number of Shares reserved and available for grant and issuance pursuant to this Plan will be increased automatically by a number of Shares equal to 5% of the total outstanding shares of the Company as of the immediately preceding December 31, provided that no more than 50,000,000 shares shall be issued as ISOs (as defined in Section 5 below). At all times the Company shall reserve and keep available a sufficient number of Shares as shall be required to satisfy the requirements of all outstanding Options granted under this Plan and all other outstanding but unvested Awards granted under this Plan.

2.2 **Adjustment of Shares.** In the event that the number of outstanding shares is changed by a stock dividend, recapitalization, stock split, reverse stock split, subdivision, combination, reclassification or similar change in the capital structure of the Company without consideration, then (a) the number of Shares reserved for issuance under this Plan, (b) the number of Shares that may be granted pursuant to Sections 3 and 9 below, (c) the Exercise Prices of and number of Shares subject to outstanding Options, and (d) the number of Shares subject to other outstanding Awards will be proportionately adjusted, subject to any required action by the Board or the stockholders of the Company and compliance with applicable securities laws; provided, however, that fractions of a Share will not be issued but will either be replaced by a cash payment equal to the Fair Market Value of such fraction of a Share or will be rounded up to the nearest whole Share, as determined by the Committee.

3. **ELIGIBILITY.** ISOs (as defined in Section 5 below) may be granted only to employees (including officers and directors who are also employees) of the Company or of a Parent or Subsidiary of the Company. All other Awards may be granted to employees, officers, directors, consultants, independent contractors and advisors of the Company or any Parent or Subsidiary of the Company; provided such consultants, contractors and advisors render bona fide services not in connection with the offer and sale of securities in a capital-raising transaction. No person will be eligible to receive more than 2,000,000 Shares in any calendar year under this Plan pursuant to the grant of Awards hereunder, other than new employees of the Company or of a Parent or Subsidiary of the Company (including new employees who are also officers and directors of the Company or any Parent or Subsidiary of the Company), who are eligible to receive up to a maximum of 3,000,000 Shares in the calendar year in which they commence their employment. A person may be granted more than one Award under this Plan.

4. ADMINISTRATION.

4.1 Committee Authority. This Plan will be administered by the Committee or by the Board acting as the Committee. Except for automatic grants to Outside Directors pursuant to Section 9 hereof, and subject to the general purposes, terms and conditions of this Plan, and to the direction of the Board, the Committee will have full power to implement and carry out this Plan. Except for automatic grants to Outside Directors pursuant to Section 9 hereof, the Committee will have the authority to:

- (a) construe and interpret this Plan, any Award Agreement and any other agreement or document executed pursuant to this Plan;
- (b) prescribe, amend and rescind rules and regulations relating to this Plan or any Award;
- (c) select persons to receive Awards;
- (d) determine the form and terms of Awards;
- (e) determine the number of Shares or other consideration subject to Awards;
- (f) determine whether Awards will be granted singly, in combination with, in tandem with, in replacement of, or as alternatives to, other Awards under this Plan or any other incentive or compensation plan of the Company or any Parent or Subsidiary of the Company;
- (g) grant waivers of Plan or Award conditions;
- (h) determine the vesting, exercisability and payment of Awards;
- (i) correct any defect, supply any omission or reconcile any inconsistency in this Plan, any Award or any Award Agreement;
- (j) determine whether an Award has been earned; and
- (k) make all other determinations necessary or advisable for the administration of this Plan.

4.2 Committee Discretion. Except for automatic grants to Outside Directors pursuant to Section 9 hereof, any determination made by the Committee with respect to any Award will be made in its sole discretion at the time of grant of the Award or, unless in contravention of any express term of this Plan or Award, at any later time, and such determination will be final and binding on the Company and on all persons having an interest in any Award under this Plan. The Committee may delegate to one or more officers of the Company the authority to grant an Award under this Plan to Participants who are not Insiders of the Company.

5. OPTIONS. The Committee may grant Options to eligible persons and will determine whether such Options will be Incentive Stock Options within the meaning of the Code ("**ISO**") or Nonqualified Stock Options ("**NQSOs**"), the number of Shares subject to the Option, the Exercise Price of the Option, the period during which the Option may be exercised, and all other terms and conditions of the Option, subject to the following:

5.1 Form of Option Grant. Each Option granted under this Plan will be evidenced by an Award Agreement which will expressly identify the Option as an ISO or an NQSO ("**Stock Option Agreement**"), and, except as otherwise required by the terms of Section 9 hereof, will be in such form and contain such provisions (which need not be the same for each Participant) as the Committee may from time to time approve, and which will comply with and be subject to the terms and conditions of this Plan.

5.2 Date of Grant. The date of grant of an Option will be the date on which the Committee makes the determination to grant such Option, unless otherwise specified by the Committee. The Stock Option Agreement and a copy of this Plan will be delivered to the Participant within a reasonable time after the granting of the Option.

5.3 Exercise Period. Options may be exercisable within the times or upon the events determined by the Committee as set forth in the Stock Option Agreement governing such Option; provided, however, that no Option will be exercisable after the expiration of ten (10) years from the date the Option is granted; and provided further that no ISO granted to a person who directly or by attribution owns more than ten percent (10%) of the total combined voting power of all classes of stock of the Company or of any Parent or Subsidiary of the Company ("**Ten Percent Stockholder**") will be exercisable after the expiration of five (5) years from the date the ISO is granted. The Committee also may provide for Options to become exercisable at one time or from time to time, periodically or otherwise, in such number of Shares or percentage of Shares as the Committee determines.

5.4 Exercise Price. The Exercise Price of an Option will be determined by the Committee when the Option is granted and may be not less than 100% of the Fair Market Value of the Shares on the date of grant; provided that: (i) the Exercise Price of an ISO will be not less than 100% of the Fair Market Value of the Shares on the date of grant; and (ii) the Exercise Price of any ISO granted to a Ten Percent Stockholder will not be less than 110% of the Fair Market Value of the Shares on the date of grant. Payment for the Shares purchased may be made in accordance with Section 8 of this Plan.

5.5 Method of Exercise. Options may be exercised only by delivery to the Company of a written stock option exercise agreement (the "**Exercise Agreement**") in a form approved by the Committee (which need not be the same for each Participant), stating the number of Shares being purchased, the restrictions imposed on the Shares purchased under such Exercise Agreement, if any, and such representations and agreements regarding Participant's investment intent and access to information and other matters, if any, as may be required or desirable by the Company to comply with applicable securities laws, together with payment in full of the Exercise Price for the number of Shares being purchased.

5.6 Termination. Notwithstanding the exercise periods set forth in the Stock Option Agreement, exercise of an Option will always be subject to the following:

- (a) If the Participant is Terminated for any reason except death or Disability, then the Participant may exercise such Participant's Options only to the extent that such Options would have been exercisable upon the Termination Date no later than three (3) months after the Termination Date (or such shorter or longer time period not exceeding five (5) years as may be determined by the Committee, with any exercise beyond three (3) months after the Termination Date deemed to be an NQSO), but in any event, no later than the expiration date of the Options.
 - (b) If the Participant is Terminated because of Participant's death or Disability (or the Participant dies within three (3) months after a Termination other than for Cause or because of Participant's Disability), then Participant's Options may be exercised only to the extent that such Options would have been exercisable by Participant on the Termination Date and must be exercised by Participant (or Participant's legal representative or authorized assignee) no later than twelve (12) months after the Termination Date (or such shorter or longer time period not exceeding five (5) years as may be determined by the Committee, with any such exercise beyond (a) three (3) months after the Termination Date when the Termination is for any reason other than the Participant's death or Disability, or (b) twelve (12) months after the Termination Date when the Termination is for Participant's death or Disability, deemed to be an NQSO), but in any event no later than the expiration date of the Options.
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- (c) Notwithstanding the provisions in paragraph 5.6(a) above, if a Participant is terminated for Cause, neither the Participant, the Participant's estate nor such other person who may then hold the Option shall be entitled to exercise any Option with respect to any Shares whatsoever, after termination of service, whether or not after termination of service the Participant may receive payment from the Company or Subsidiary for vacation pay, for services rendered prior to termination, for services rendered for the day on which termination occurs, for salary in lieu of notice, or for any other benefits. In making such determination, the Board shall give the Participant an opportunity to present to the Board evidence on his behalf. For the purpose of this paragraph, termination of service shall be deemed to occur on the date when the Company dispatches notice or advice to the Participant that his service is terminated.

5.7 Limitations on Exercise. The Committee may specify a reasonable minimum number of Shares that may be purchased on any exercise of an Option, provided that such minimum number will not prevent Participant from exercising the Option for the full number of Shares for which it is then exercisable.

5.8 Limitations on ISO. The aggregate Fair Market Value (determined as of the date of grant) of Shares with respect to which ISO are exercisable for the first time by a Participant during any calendar year (under this Plan or under any other incentive stock option plan of the Company, Parent or Subsidiary of the Company) will not exceed \$100,000. If the Fair Market Value of Shares on the date of grant with respect to which ISO are exercisable for the first time by a Participant during any calendar year exceeds \$100,000, then the Options for the first \$100,000 worth of Shares to become exercisable in such calendar year will be ISO and the Options for the amount in excess of \$100,000 that become exercisable in that calendar year will be NQSOs. In the event that the Code or the regulations promulgated thereunder are amended after the Effective Date of this Plan to provide for a different limit on the Fair Market Value of Shares permitted to be subject to ISO, such different limit will be automatically incorporated herein and will apply to any Options granted after the effective date of such amendment.

5.9 Modification, Extension or Renewal. The Committee may modify, extend or renew outstanding Options and authorize the grant of new Options in substitution therefor, provided that any such action may not, without the written consent of a Participant, impair any of such Participant's rights under any Option previously granted. Any outstanding ISO that is modified, extended, renewed or otherwise altered will be treated in accordance with Section 424(h) of the Code. The Committee may reduce the Exercise Price of outstanding Options without the consent of Participants affected by a written notice to them; provided, however, that the Exercise Price may not be reduced below the minimum Exercise Price that would be permitted under Section 5.4 of this Plan for Options granted on the date the action is taken to reduce the Exercise Price.

5.10 No Disqualification. Notwithstanding any other provision in this Plan, no term of this Plan relating to ISO will be interpreted, amended or altered, nor will any discretion or authority granted under this Plan be exercised, so as to disqualify this Plan under Section 422 of the Code or, without the consent of the Participant affected, to disqualify any ISO under Section 422 of the Code.

6. RESTRICTED STOCK. A Restricted Stock Award is an offer by the Company to sell to an eligible person Shares that are subject to restrictions. The Committee will determine to whom an offer will be made, the number of Shares the person may purchase, the price to be paid (the "**Purchase Price**"), the restrictions to which the Shares will be subject, and all other terms and conditions of the Restricted Stock Award, subject to the following:

6.1 Form of Restricted Stock Award. All purchases under a Restricted Stock Award made pursuant to this Plan will be evidenced by an Award Agreement ("**Restricted Stock Purchase Agreement**") that will be in such form (which need not be the same for each Participant) as the Committee will from time to time approve, and will comply with and be subject to the terms and conditions of this Plan. The offer of Restricted Stock will be accepted by the Participant's execution and delivery of the Restricted Stock Purchase Agreement and full payment for the Shares to the Company within thirty (30) days from the date the Restricted Stock Purchase Agreement is delivered to the person. If such person does not execute and deliver the Restricted Stock Purchase Agreement along with full payment for the Shares to the Company within thirty (30) days, then the offer will terminate, unless otherwise determined by the Committee.

6.2 Purchase Price. The Purchase Price of Shares sold pursuant to a Restricted Stock Award will be determined by the Committee on the date the Restricted Stock Award is granted, except in the case of a sale to a Ten Percent Stockholder, in which case the Purchase Price will be 100% of the Fair Market Value. Payment of the Purchase Price may be made in accordance with Section 8 of this Plan.

6.3 Terms of Restricted Stock Awards. Restricted Stock Awards shall be subject to such restrictions as the Committee may impose. These restrictions may be based upon completion of a specified number of years of service with the Company or upon completion of the performance goals as set out in advance in the Participant's individual Restricted Stock Purchase Agreement. Restricted Stock Awards may vary from Participant to Participant and between groups of Participants. Prior to the grant of a Restricted Stock Award, the Committee shall: (a) determine the nature, length and starting date of any Performance Period for the Restricted Stock Award; (b) select from among the Performance Factors to be used to measure performance goals, if any; and (c) determine the number of Shares that may be awarded to the Participant. Prior to the payment of any Restricted Stock Award, the Committee shall determine the extent to which such Restricted Stock Award has been earned. Performance Periods may overlap and Participants may participate simultaneously with respect to Restricted Stock Awards that are subject to different Performance Periods and having different performance goals and other criteria.

6.4 Termination During Performance Period. If a Participant is Terminated during a Performance Period for any reason, then such Participant will be entitled to payment (whether in Shares, cash or otherwise) with respect to the Restricted Stock Award only to the extent earned as of the date of Termination in accordance with the Restricted Stock Purchase Agreement, unless the Committee will determine otherwise.

7. STOCK BONUSES.

7.1 Awards of Stock Bonuses. A Stock Bonus is an award of Shares (which may consist of Restricted Stock) for services rendered to the Company or any Parent or Subsidiary of the Company. A Stock Bonus may be awarded for past services already rendered to the Company, or any Parent or Subsidiary of the Company pursuant to an Award Agreement (the "**Stock Bonus Agreement**") that will be in such form (which need not be the same for each Participant) as the Committee will from time to time approve, and will comply with and be subject to the terms and conditions of this Plan. A Stock Bonus may be awarded upon satisfaction of such performance goals as are set out in advance in the Participant's individual Award Agreement (the "**Performance Stock Bonus Agreement**") that will be in such form (which need not be the same for each Participant) as the Committee will from time to time approve, and will comply with and be subject to the terms and conditions of this Plan. Stock Bonuses may vary from Participant to Participant and between groups of Participants, and may be based upon the achievement of the Company, Parent or Subsidiary and/or individual performance factors or upon such other criteria as the Committee may determine.

7.2 Terms of Stock Bonuses. The Committee will determine the number of Shares to be awarded to the Participant. If the Stock Bonus is being earned upon the satisfaction of performance goals pursuant to a Performance Stock Bonus Agreement, then the Committee will: (a) determine the nature, length and starting date of any Performance Period for each Stock Bonus; (b) select from among the Performance Factors to be used to measure the performance, if any; and (c) determine the number of Shares that may be awarded to the Participant. Prior to the payment of any Stock Bonus, the Committee shall determine the extent to which such Stock Bonuses have been earned. Performance Periods may overlap and Participants may participate simultaneously with respect to Stock Bonuses that are subject to different Performance Periods and different performance goals and other criteria. The number of Shares may be fixed or may vary in accordance with such performance goals and criteria as may be determined by the Committee. The Committee may adjust the performance goals applicable to the Stock Bonuses to take into account changes in law and accounting or tax rules and to make such adjustments as the Committee deems necessary or appropriate to reflect the impact of extraordinary or unusual items, events or circumstances to avoid windfalls or hardships.

7.3 Form of Payment. The earned portion of a Stock Bonus may be paid currently or on a deferred basis with such interest or dividend equivalent, if any, as the Committee may determine. Payment may be made in the form of cash or whole Shares or a combination thereof, either in a lump sum payment or in installments, all as the Committee will determine.

8. PAYMENT FOR SHARE PURCHASES.

8.1 Payment. Payment for Shares purchased pursuant to this Plan may be made in cash (by check) or, where expressly approved for the Participant by the Committee and where permitted by law:

- (a) by cancellation of indebtedness of the Company to the Participant;
- (b) by surrender of shares that either: (1) have been owned by Participant for more than six (6) months and have been paid for within the meaning of SEC Rule 144 (and, if such shares were purchased from the Company by use of a promissory note, such note has been fully paid with respect to such shares); or (2) were obtained by Participant in the public market;
- (c) by tender of a full recourse promissory note having such terms as may be approved by the Committee and bearing interest at a rate sufficient to avoid imputation of income under Sections 483 and 1274 of the Code; provided, however, that Participants who are not employees or directors of the Company will not be entitled to purchase Shares with a promissory note unless the note is adequately secured by collateral other than the Shares;
- (d) by waiver of compensation due or accrued to the Participant for services rendered;
- (e) with respect only to purchases upon exercise of an Option, and provided that a public market for the Company's stock exists:
 - (1) through a "same day sale" commitment from the Participant and a broker-dealer that is a member of the National Association of Securities Dealers (an "**NASD Dealer**") whereby the Participant irrevocably elects to exercise the Option and to sell a portion of the Shares so purchased to pay for the Exercise Price, and whereby the NASD Dealer irrevocably commits upon receipt of such Shares to forward the Exercise Price directly to the Company; or
 - (2) through a "margin" commitment from the Participant and a NASD Dealer whereby the Participant irrevocably elects to exercise the Option and to pledge the Shares so purchased to the NASD Dealer in a margin account as security for a loan from the NASD Dealer in the amount of the Exercise Price, and whereby the NASD Dealer irrevocably commits upon receipt of such Shares to forward the Exercise Price directly to the Company; or
- (f) by any combination of the foregoing.

8.2 Loan Guarantees. The Committee may help the Participant pay for Shares purchased under this Plan by authorizing a guarantee by the Company of a third-party loan to the Participant.

9. AUTOMATIC GRANTS TO OUTSIDE DIRECTORS.

9.1 Types of Options and Shares. Options granted under this Plan and subject to this Section 9 shall be NQSOs.

9.2 Eligibility. Options subject to this Section 9 shall be granted only to Outside Directors.

9.3 Initial Grant. Each Outside Director who first becomes a member of the Board on or after the Effective Date will automatically be granted an Option for 50,000 Shares (an "**Initial Grant**") on the date such Outside Director first becomes a member of the Board. Each Outside Director who became a member of the Board prior to the Effective Date will automatically be granted an Option for 25,000 Shares immediately following the Effective Date.

9.4 Succeeding Grant. Immediately following each Annual Meeting of stockholders, each Outside Director will automatically be granted an Option for 20,000 Shares (a "**Succeeding Grant**"), provided the Outside Director is a member of the Board on such date and has served continuously as a member of the Board for a period of at least one year since the date of such Outside Director's Initial Grant. Notwithstanding anything in this Section 9.4 to the contrary, the Board may make discretionary supplemental grants to an Outside Director who has served for less than one year from the date of such Outside Director's Initial Grant, provided that no Outside Director may receive more than 70,000 Shares in any calendar year pursuant to this Section 9.

9.5 Vesting. The date an Outside Director receives an Initial Grant or a Succeeding Grant is referred to in this Plan as the "**Start Date**" for such Option.

(a) Initial Grants. Each Initial Grant will vest (i) as to twenty-five percent (25%) of the Shares on the earlier of (A) the one (1) year anniversary of the Start Date or (B) the next succeeding Annual Meeting where such Outside Director is not serving as an Outside Director following such Annual Meeting but such person is an Outside Director on the day immediately preceding such Annual Meeting and (ii) as to 2.08333% of the Shares on each subsequent monthly anniversary thereafter, so long as the Outside Director continuously remains a director or consultant of the Company.

(b) Succeeding Grants. Each Succeeding Grant will vest (i) as to twenty-five percent (25%) of the Shares on the earlier of (A) the one (1) year anniversary of the Start Date or (B) the next succeeding Annual Meeting where such Outside Director is not serving as an Outside Director following such Annual Meeting but such person is an Outside Director on the day immediately preceding such Annual Meeting and (ii) as to 2.08333% of the Shares on each subsequent monthly anniversary thereafter, so long as the Outside Director continuously remains a director or consultant of the Company.

Notwithstanding any provision to the contrary, in the event of a Corporate Transaction described in Section 18.1, the vesting of all options granted to Outside Directors pursuant to this Section 9 will accelerate and such options will become exercisable in full prior to the consummation of such event at such times and on such conditions as the Committee determines, and must be exercised, if at all, within three months of the consummation of said event. Any options not exercised within such three-month period shall expire.

9.6 Exercise Price. The exercise price of an Option pursuant to an Initial Grant and Succeeding Grant shall be the Fair Market Value of the Shares, at the time that the Option is granted.

10. WITHHOLDING TAXES.

10.1 Withholding Generally. Whenever Shares are to be issued in satisfaction of Awards granted under this Plan, the Company may require the Participant to remit to the Company an amount sufficient to satisfy federal, state and local withholding tax requirements prior to the delivery of any certificate or certificates for such Shares. Whenever, under this Plan, payments in satisfaction of Awards are to be made in cash, such payment will be net of an amount sufficient to satisfy federal, state, and local withholding tax requirements.

10.2 Stock Withholding. When, under applicable tax laws, a Participant incurs tax liability in connection with the exercise or vesting of any Award that is subject to tax withholding and the Participant is obligated to pay the Company the amount required to be withheld, the Committee may in its sole discretion allow the Participant to satisfy the minimum withholding tax obligation by electing to have the Company withhold from the Shares to be issued that number of Shares having a Fair Market Value equal to the minimum amount required to be withheld, determined on the date that the amount of tax to be withheld is to be determined. All elections by a Participant to have Shares withheld for this purpose will be made in accordance with the requirements established by the Committee and be in writing in a form acceptable to the Committee.

11. TRANSFERABILITY.

11.1 Except as otherwise provided in this Section 11, Awards granted under this Plan, and any interest therein, will not be transferable or assignable by Participant, and may not be made subject to execution, attachment or similar process, otherwise than by will or by the laws of descent and distribution or as determined by the Committee and set forth in the Award Agreement with respect to Awards that are not ISOs.

11.2 All Awards other than NQSO's. All Awards other than NQSO's shall be exercisable: (i) during the Participant's lifetime, only by (A) the Participant, or (B) the Participant's guardian or legal representative; and (ii) after Participant's death, by the legal representative of the Participant's heirs or legatees.

11.3 NQSOs. Unless otherwise restricted by the Committee, an NQSO shall be exercisable: (i) during the Participant's lifetime only by (A) the Participant, (B) the Participant's guardian or legal representative, (C) a Family Member of the Participant who has acquired the NQSO by "permitted transfer;" and (ii) after Participant's death, by the legal representative of the Participant's heirs or legatees. "Permitted transfer" means, as authorized by this Plan and the Committee in an NQSO, any transfer effected by the Participant during the Participant's lifetime of an interest in such NQSO but only such transfers which are by gift or domestic relations order. A permitted transfer does not include any transfer for value and neither of the following are transfers for value: (a) a transfer of under a domestic relations order in settlement of marital property rights or (b) a transfer to an entity in which more than fifty percent of the voting interests are owned by Family Members or the Participant in exchange for an interest in that entity.

12. PRIVILEGES OF STOCK OWNERSHIP; RESTRICTIONS ON SHARES.

12.1 Voting and Dividends. No Participant will have any of the rights of a stockholder with respect to any Shares until the Shares are issued to the Participant. After Shares are issued to the Participant, the Participant will be a stockholder and have all the rights of a stockholder with respect to such Shares, including the right to vote and receive all dividends or other distributions made or paid with respect to such Shares; provided, that if such Shares are Restricted Stock, then any new, additional or different securities the Participant may become entitled to receive with respect to such Shares by virtue of a stock dividend, stock split or any other change in the corporate or capital structure of the Company will be subject to the same restrictions as the Restricted Stock; provided, further, that the Participant will have no right to retain such stock dividends or stock distributions with respect to Shares that are repurchased at the Participant's Purchase Price or Exercise Price pursuant to Section 12.

12.2 Financial Statements. The Company will provide financial statements to each Participant prior to such Participant's purchase of Shares under this Plan, and to each Participant annually during the period such Participant has Awards outstanding; provided, however, the Company will not be required to provide such financial statements to Participants whose services in connection with the Company assure them access to equivalent information.

12.3 Restrictions on Shares. At the discretion of the Committee, the Company may reserve to itself and/or its assignee(s) in the Award Agreement a right to repurchase a portion of or all Unvested Shares held by a Participant following such Participant's Termination at any time within ninety (90) days after the later of Participant's Termination Date and the date Participant purchases Shares under this Plan, for cash and/or cancellation of purchase money indebtedness, at the Participant's Exercise Price or Purchase Price, as the case may be.

13. CERTIFICATES. All certificates for Shares or other securities delivered under this Plan will be subject to such stock transfer orders, legends and other restrictions as the Committee may deem necessary or advisable, including restrictions under any applicable federal, state or foreign securities law, or any rules, regulations and other requirements of the SEC or any stock exchange or automated quotation system upon which the Shares may be listed or quoted.

14. **ESCROW; PLEDGE OF SHARES.** To enforce any restrictions on a Participant's Shares, the Committee may require the Participant to deposit all certificates representing Shares, together with stock powers or other instruments of transfer approved by the Committee, appropriately endorsed in blank, with the Company or an agent designated by the Company to hold in escrow until such restrictions have lapsed or terminated, and the Committee may cause a legend or legends referencing such restrictions to be placed on the certificates. Any Participant who is permitted to execute a promissory note as partial or full consideration for the purchase of Shares under this Plan will be required to pledge and deposit with the Company all or part of the Shares so purchased as collateral to secure the payment of Participant's obligation to the Company under the promissory note; provided, however, that the Committee may require or accept other or additional forms of collateral to secure the payment of such obligation and, in any event, the Company will have full recourse against the Participant under the promissory note notwithstanding any pledge of the Participant's Shares or other collateral. In connection with any pledge of the Shares, Participant will be required to execute and deliver a written pledge agreement in such form as the Committee will from time to time approve. The Shares purchased with the promissory note may be released from the pledge on a pro rata basis as the promissory note is paid.

15. **EXCHANGE AND BUYOUT OF AWARDS.** The Committee may, at any time or from time to time, authorize the Company, with the consent of the respective Participants, to issue new Awards in exchange for the surrender and cancellation of any or all outstanding Awards. The Committee may at any time buy from a Participant an Award previously granted with payment in cash, Shares (including Restricted Stock) or other consideration, based on such terms and conditions as the Committee and the Participant may agree.

16. **SECURITIES LAW AND OTHER REGULATORY COMPLIANCE.** An Award will not be effective unless such Award is in compliance with all applicable federal and state securities laws, rules and regulations of any governmental body, and the requirements of any stock exchange or automated quotation system upon which the Shares may then be listed or quoted, as they are in effect on the date of grant of the Award and also on the date of exercise or other issuance. Notwithstanding any other provision in this Plan, the Company will have no obligation to issue or deliver certificates for Shares under this Plan prior to: (a) obtaining any approvals from governmental agencies that the Company determines are necessary or advisable; and/or (b) completion of any registration or other qualification of such Shares under any state or federal law or ruling of any governmental body that the Company determines to be necessary or advisable. The Company will be under no obligation to register the Shares with the SEC or to effect compliance with the registration, qualification or listing requirements of any state securities laws, stock exchange or automated quotation system, and the Company will have no liability for any inability or failure to do so.

17. **NO OBLIGATION TO EMPLOY.** Nothing in this Plan or any Award granted under this Plan will confer or be deemed to confer on any Participant any right to continue in the employ of, or to continue any other relationship with, the Company or any Parent or Subsidiary of the Company or limit in any way the right of the Company or any Parent or Subsidiary of the Company to terminate Participant's employment or other relationship at any time, with or without cause.

18. **CORPORATE TRANSACTIONS.**

18.1 **Assumption or Replacement of Awards by Successor.** Except for automatic grants to Outside Directors pursuant to Section 9 hereof, in the event of (a) a dissolution or liquidation of the Company, (b) a merger or consolidation in which the Company is not the surviving corporation (other than a merger or consolidation with a wholly-owned subsidiary, a reincorporation of the Company in a different jurisdiction, or other transaction in which there is no substantial change in the stockholders of the Company or their relative stock holdings and the Awards granted under this Plan are assumed, converted or replaced by the successor corporation, which assumption will be binding on all Participants), (c) a merger in which the Company is the surviving corporation but after which the stockholders of the Company immediately prior to such merger (other than any stockholder that merges, or which owns or controls another corporation that merges, with the Company in such merger) cease to own their shares or other equity interest in the Company, (d) the sale of substantially all of the assets of the Company, or (e) the acquisition, sale, or transfer of more than 50% of the outstanding shares of the Company by tender offer or similar transaction (each, a "***Corporate Transaction***"), (i) the vesting of all outstanding Awards will accelerate as to an additional 25% of the Shares that are unvested on the date of the Corporate Transaction and, (ii) thereafter, unless otherwise set forth below, all unvested shares subject to outstanding Awards will continue to vest in equal monthly installments over the remaining original vesting term as set forth in the Award Agreement. Upon a Corporate Transaction, all outstanding Awards shall be assumed by the successor or acquiring corporation (if any), which assumption will be binding on all Participants. In the alternative, the successor or acquiring corporation may substitute equivalent Awards or provide substantially similar consideration to Participants as was provided to shareholders (after taking into account the existing provisions of the Awards). The successor corporation may also issue, in place of outstanding unvested Shares of the Company held by the Participants, substantially similar shares or other property subject to repurchase restrictions no less favorable to the Participant. In the event such successor corporation (if any) refuses to assume or substitute Awards, as provided above, pursuant to a Corporate Transaction described in this Subsection 18.1, such Awards will expire on such Corporate Transaction at such time and on such conditions as the Committee will determine. Notwithstanding anything in this Plan to the contrary, the Committee may, in its sole discretion, provide that the vesting of any or all Awards granted pursuant to this Plan will accelerate upon a Corporate Transaction described in this Section 18. If the Committee exercises such discretion with respect to Options, such Options will become exercisable in full prior to the consummation of such event at such time and on such conditions as the Committee determines, and if such Options are not exercised prior to the consummation of the Corporate Transaction, they shall terminate at such time as determined by the Committee.

18.2 Other Treatment of Awards. Subject to any greater rights granted to Participants under the foregoing provisions of this Section 18, in the event of the occurrence of any Corporate Transaction described in Section 18.1, any outstanding Awards will be treated as provided in the applicable agreement or plan of merger, consolidation, dissolution, liquidation, or sale of assets.

18.3 Assumption of Awards by the Company. The Company, from time to time, also may substitute or assume outstanding awards granted by another company, whether in connection with an acquisition of such other company or otherwise, by either; (a) granting an Award under this Plan in substitution of such other company's award; or (b) assuming such award as if it had been granted under this Plan if the terms of such assumed award could be applied to an Award granted under this Plan. Such substitution or assumption will be permissible if the holder of the substituted or assumed award would have been eligible to be granted an Award under this Plan if the other company had applied the rules of this Plan to such grant. In the event the Company assumes an award granted by another company, the terms and conditions of such award will remain unchanged (except that the exercise price and the number and nature of Shares issuable upon exercise of any such option will be adjusted appropriately pursuant to Section 424(a) of the Code). In the event the Company elects to grant a new Option rather than assuming an existing option, such new Option may be granted with a similarly adjusted Exercise Price.

19. ADOPTION AND STOCKHOLDER APPROVAL. This Plan will become effective on the date on which the registration statement filed by the Company with the SEC under the Securities Act registering the initial public offering of the Company's Common Stock is declared effective by the SEC (the "**Effective Date**"). This Plan shall be approved by the stockholders of the Company (excluding Shares issued pursuant to this Plan), consistent with applicable laws, within twelve (12) months before or after the date this Plan is adopted by the Board. Upon the Effective Date, the Committee may grant Awards pursuant to this Plan; provided, however, that: (a) no Option may be exercised prior to initial stockholder approval of this Plan; (b) no Option granted pursuant to an increase in the number of Shares subject to this Plan approved by the Board will be exercised prior to the time such increase has been approved by the stockholders of the Company; (c) in the event that initial stockholder approval is not obtained within the time period provided herein, all Awards granted hereunder shall be cancelled, any Shares issued pursuant to any Awards shall be cancelled and any purchase of Shares issued hereunder shall be rescinded; and (d) in the event that stockholder approval of such increase is not obtained within the time period provided herein, all Awards granted pursuant to such increase will be cancelled, any Shares issued pursuant to any Award granted pursuant to such increase will be cancelled, and any purchase of Shares pursuant to such increase will be rescinded.

20. TERM OF PLAN/GOVERNING LAW. Unless earlier terminated as provided herein, this Plan will terminate ten (10) years from the date this Plan is adopted by the Board or, if earlier, the date of stockholder approval. This Plan and all agreements thereunder shall be governed by and construed in accordance with the laws of the State of California.

21. AMENDMENT OR TERMINATION OF PLAN. The Board may at any time terminate or amend this Plan in any respect, including without limitation amendment of any form of Award Agreement or instrument to be executed pursuant to this Plan; provided, however, that the Board will not, without the approval of the stockholders of the Company, amend this Plan in any manner that requires such stockholder approval.

Notwithstanding anything in the Plan or in any applicable agreement to the contrary, the Committee may amend the Plan or any applicable agreement, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan or other applicable agreement to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder. By accepting an Award under this Plan, a Participant agrees to any amendment made pursuant to this Section to any Award granted under the Plan without further consideration or action.

22. **NONEXCLUSIVITY OF THE PLAN.** Neither the adoption of this Plan by the Board, the submission of this Plan to the stockholders of the Company for approval, nor any provision of this Plan will be construed as creating any limitations on the power of the Board to adopt such additional compensation arrangements as it may deem desirable, including, without limitation, the granting of stock options and bonuses otherwise than under this Plan, and such arrangements may be either generally applicable or applicable only in specific cases.

23. **409A COMPLIANCE**

A. Notwithstanding anything herein to the contrary, any discretionary authority available pursuant to this Plan shall only be exercised in a manner believed in good faith to comply with Section 409A of the Code and to maintain the exemption from Section 409A for the options and stock issued hereunder.

B. Notwithstanding anything herein to the contrary, nothing herein shall provide for any feature for the deferral of compensation other than the deferral of recognition of income until the exercise or disposition of an option.

C. Special Provisions Related To Section 409A of the Code.

1. Notwithstanding anything in the Plan or in any applicable agreement to the contrary, to the extent that any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under the Plan or applicable agreement by reason of the occurrence of a Change in Control, or the Participant’s Disability or separation from service, such amount or benefit will not be payable or distributable to the Participant by reason of such circumstance unless (i) the circumstances giving rise to such Change in Control, Disability or separation from service meet any description or definition of “change in control event”, “disability” or “separation from service”, as the case may be, in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. This provision does not prohibit the vesting of any option upon a Change in Control, Disability or separation from service, however defined. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the next earliest payment or distribution date or event specified in the applicable agreement that is permissible under Section 409A.

2. If any one or more options granted under the Plan to a Participant could qualify for any separation pay exemption described in Treas. Reg. Section 1.409A-1(b) (9), but such options in the aggregate exceed the dollar limit permitted for the separation pay exemptions, the Company (acting through the Committee or the Head of Human Resources) shall determine which options or portions thereof will be subject to such exemptions.

3. Notwithstanding anything in the Plan or in any applicable agreement to the contrary, if any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under this Plan or in any notice applicable agreement by reason of a Participant’s separation from service during a period in which the Participant is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Committee under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes):

(i) if the payment or distribution is payable in a lump sum, the Participant’s right to receive payment or distribution of such non-exempt deferred compensation will be delayed until the earlier of the Participant’s death or the first day of the seventh month following the Participant’s separation from service; and

(ii) if the payment or distribution is payable over time, the amount of such non-exempt deferred compensation that would otherwise be payable during the six-month period immediately following the Participant’s separation from service will be accumulated and the Participant’s right to receive payment or distribution of such accumulated amount will be delayed until the earlier of the Participant’s death or the first day of the seventh month following the Participant’s separation from service, whereupon the accumulated amount will be paid or distributed to the Participant and the normal payment or distribution schedule for any remaining payments or distributions will resume.

For purposes of this Plan, the term “Specified Employee” has the meaning given such term in Code Section 409A and the final regulations thereunder, provided, however, that, as permitted in such final regulations, the Company’s Specified Employees and its application of the six-month delay rule of Code Section 409A(a)(2)(B)(i) shall be determined in accordance with rules adopted by the Board or any committee of the Board, which shall be applied consistently with respect to all nonqualified deferred compensation arrangements of the Company, including this Plan.

23. **DEFINITIONS.** As used in this Plan, the following terms will have the following meanings:

"**Award**" means any award under this Plan, including any Option, Restricted Stock or Stock Bonus.

"**Award Agreement**" means, with respect to each Award, the signed written agreement between the Company and the Participant setting forth the terms and conditions of the Award.

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

"**Cause**" means the commission of an act of theft, embezzlement, fraud, dishonesty or a breach of fiduciary duty to the Company or a Parent or Subsidiary of the Company.

"**Code**" means the Internal Revenue Code of 1986, as amended. Reference to a specific Section of the Code or regulation thereunder shall include such Section or regulation, any valid regulation promulgated under such Section, and any comparable provision of any future law, legislation or regulation amending, supplementing or superseding such Section or regulation.

"**Committee**" means the Compensation Committee of the Board.

"**Company**" means Lexar Media, Inc. or any successor corporation.

"**Disability**" means a disability, whether temporary or permanent, partial or total, as determined by the Committee. Notwithstanding the foregoing, for any Options that constitute a nonqualified deferred compensation plan within the meaning of Section 409A(d) of the Code, “Disability” has the meaning given such term in Section 409A of the Code.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Exercise Price**" means the price at which a holder of an Option may purchase the Shares issuable upon exercise of the Option.

"**Fair Market Value**" means, as of any date, the value of a share of the Company's Common Stock determined as follows:

(a) if such Common Stock is then quoted on the Nasdaq National Market, its closing price on the Nasdaq National Market on the date of determination as reported in The Wall Street Journal;

(b) if such Common Stock is publicly traded and is then listed on a national securities exchange, its closing price on the date of determination on the principal national securities exchange on which the Common Stock is listed or admitted to trading as reported in The Wall Street Journal;

- (c) if such Common Stock is publicly traded but is not quoted on the Nasdaq National Market nor listed or admitted to trading on a national securities exchange, the average of the closing bid and asked prices on the date of determination as reported in The Wall Street Journal;
- (d) in the case of an Award made on the Effective Date, the price per share at which shares of the Company's Common Stock are initially offered for sale to the public by the Company's underwriters in the initial public offering of the Company's Common Stock pursuant to a registration statement filed with the SEC under the Securities Act; or
- (e) if none of the foregoing is applicable, by the Committee in good faith.

"Family Member" includes any of the following:

- (a) child, stepchild, grandchild, parent, stepparent, grandparent, spouse, former spouse, sibling, niece, nephew, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law of the Participant, including any such person with such relationship to the Participant by adoption;
- (b) any person (other than a tenant or employee) sharing the Participant's household;
- (c) a trust in which the persons in (a) and (b) have more than fifty percent of the beneficial interest;
- (d) a foundation in which the persons in (a) and (b) or the Participant control the management of assets; or
- (e) any other entity in which the persons in (a) and (b) or the Participant own more than fifty percent of the voting interest.

"Insider" means an officer or director of the Company or any other person whose transactions in the Company's Common Stock are subject to Section 16 of the Exchange Act.

"Option" means an award of an option to purchase Shares pursuant to Section 5.

"Outside Director" means a member of the Board who is not an employee of the Company or any Parent, Subsidiary or Affiliate of the Company.

"Parent" means any corporation (other than the Company) in an unbroken chain of corporations ending with the Company if each of such corporations other than the Company owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

"Participant" means a person who receives an Award under this Plan.

"Performance Factors" means the factors selected by the Committee from among the following measures to determine whether the performance goals established by the Committee and applicable to Awards have been satisfied:

- (a) Net revenue and/or net revenue growth;
 - (b) Earnings before income taxes and amortization and/or earnings before income taxes and amortization growth;
 - (c) Operating income and/or operating income growth;
 - (d) Net income and/or net income growth;
 - (e) Earnings per share and/or earnings per share growth;
-

- (f) Total stockholder return and/or total stockholder return growth;
- (g) Return on equity;
- (h) Operating cash flow return on income;
- (i) Adjusted operating cash flow return on income;
- (j) Economic value added; and
- (k) Individual confidential business objectives.

"**Performance Period**" means the period of service determined by the Committee, not to exceed five years, during which years of service or performance is to be measured for Restricted Stock Awards or Stock Bonuses.

"**Plan**" means this Lexar Media, Inc. 2000 Equity Incentive Plan, as amended from time to time.

"**Restricted Stock Award**" means an award of Shares pursuant to Section 6.

"**SEC**" means the Securities and Exchange Commission.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Shares**" means shares of the Company's Common Stock reserved for issuance under this Plan, as adjusted pursuant to Sections 2 and 18, and any successor security.

"**Stock Bonus**" means an award of Shares, or cash in lieu of Shares, pursuant to Section 7.

"**Subsidiary**" means any corporation (other than the Company) in an unbroken chain of corporations beginning with the Company if each of the corporations other than the last corporation in the unbroken chain owns stock possessing 50% or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

"**Termination**" or "**Terminated**" means, for purposes of this Plan with respect to a Participant, that the Participant has for any reason ceased to provide services as an employee, officer, director, consultant, independent contractor, or advisor to the Company or a Parent or Subsidiary of the Company. An employee will not be deemed to have ceased to provide services in the case of (i) sick leave, (ii) military leave, or (iii) any other leave of absence approved by the Committee, provided, that such leave is for a period of not more than 90 days, unless reemployment upon the expiration of such leave is guaranteed by contract or statute or unless provided otherwise pursuant to formal policy adopted from time to time by the Company and issued and promulgated to employees in writing. In the case of any employee on an approved leave of absence, the Committee may make such provisions respecting suspension of vesting of the Award while on leave from the employ of the Company or a Subsidiary as it may deem appropriate, except that in no event may an Option be exercised after the expiration of the term set forth in the Option agreement. The Committee will have sole discretion to determine whether a Participant has ceased to provide services and the effective date on which the Participant ceased to provide services (the "**Termination Date**").

"**Unvested Shares**" means "Unvested Shares" as defined in the Award Agreement.

"**Vested Shares**" means "Vested Shares" as defined in the Award Agreement.

**MICRON TECHNOLOGY, INC.
2007 EQUITY INCENTIVE PLAN**

**ARTICLE 1
PURPOSE**

1.1. *GENERAL.* The purpose of the Micron Technology, Inc. 2007 Equity Incentive Plan (the "Plan") is to promote the success, and enhance the value, of Micron Technology, Inc. (the "Company"), by linking the personal interests of employees, non-employee directors and consultants of the Company or any Affiliate (as defined below) to those of Company stockholders and by providing such persons with an incentive for outstanding performance. The Plan is further intended to provide flexibility to the Company in its ability to motivate, attract, and retain the services of employees, non-employee directors and consultants upon whose judgment, interest, and special effort the successful conduct of the Company's operation is largely dependent. Accordingly, the Plan permits the grant of incentive awards from time to time to selected employees, non-employee directors and consultants of the Company and its Affiliates; provided, however, that no officer, including without limitation the chief executive officer of the Company, is eligible to be a Participant in the Plan.

**ARTICLE 2
DEFINITIONS**

2.1. *DEFINITIONS.* When a word or phrase appears in this Plan with the initial letter capitalized, and the word or phrase does not commence a sentence, the word or phrase shall generally be given the meaning ascribed to it in this Section or in Section 1.1 unless a clearly different meaning is required by the context. The following words and phrases shall have the following meanings:

- (a) "Affiliate" means (i) any Subsidiary or Parent, or (ii) an entity that directly or through one or more intermediaries controls, is controlled by or is under common control with, the Company, as determined by the Committee.
- (b) "Award" means any Option, Stock Appreciation Right, Restricted Stock Award, Restricted Stock Unit Award, Deferred Stock Unit Award, Performance Share, Dividend Equivalent Award, Other Stock-Based Award, or any other right or interest relating to Stock or cash, granted to a Participant under the Plan.
- (c) "Award Certificate" means a written document, in such form as the Committee prescribes from time to time, setting forth the terms and conditions of an Award. Award Certificates may be in the form of individual award agreements or certificates or a program document describing the terms and provisions of an Awards or series of Awards under the Plan. The Committee may provide for the use of electronic, internet or other non-paper Award Certificates, and the use of electronic, internet or other non-paper means for the acceptance thereof and actions thereunder by a Participant.
- (d) "Board" means the Board of Directors of the Company.
- (e) "Change in Control" means and includes the occurrence of any one of the following events:
 - (i) individuals who, on the Effective Date, constitute the Board of Directors of the Company (the "Incumbent Directors") cease for any reason to constitute at least a majority of such Board, provided that any person becoming a director after the Effective Date and whose election or nomination for election was approved by a vote of at least a majority of the Incumbent Directors then on the Board shall be an Incumbent Director; *provided, however*, that no individual initially elected or nominated as a director of the Company as a result of an actual or threatened election contest with respect to the election or removal of directors ("Election Contest") or other actual or threatened solicitation of proxies or consents by or on behalf of any Person other than the Board ("Proxy Contest"), including by reason of any agreement intended to avoid or settle any Election Contest or Proxy Contest, shall be deemed an Incumbent Director; or

(ii) any person is or becomes a "beneficial owner" (as defined in Rule 13d-3 under the 1934 Act), directly or indirectly, of either (A) 35% or more of the then-outstanding shares of common stock of the Company ("Company Common Stock") or (B) securities of the Company representing 35% or more of the combined voting power of the Company's then outstanding securities eligible to vote for the election of directors (the "Company Voting Securities"); *provided, however*, that for purposes of this subsection (ii), the following acquisitions shall not constitute a Change in Control: (w) an acquisition directly from the Company, (x) an acquisition by the Company or a Subsidiary of the Company, (y) an acquisition by any employee benefit plan (or related trust) sponsored or maintained by the Company or any Subsidiary of the Company, or (z) an acquisition pursuant to a Non-Qualifying Transaction (as defined in subsection (iii) below); or

(iii) the consummation of a reorganization, merger, consolidation, statutory share exchange or similar form of corporate transaction involving the Company or a Subsidiary (a "Reorganization"), or the sale or other disposition of all or substantially all of the Company's assets (a "Sale") or the acquisition of assets or stock of another corporation (an "Acquisition"), unless immediately following such Reorganization, Sale or Acquisition: (A) all or substantially all of the individuals and entities who were the beneficial owners, respectively, of the outstanding Company Common Stock and outstanding Company Voting Securities immediately prior to such Reorganization, Sale or Acquisition beneficially own, directly or indirectly, more than 50% of, respectively, the then outstanding shares of common stock and the combined voting power of the then outstanding voting securities entitled to vote generally in the election of directors, as the case may be, of the corporation resulting from such Reorganization, Sale or Acquisition (including, without limitation, a corporation which as a result of such transaction owns the Company or all or substantially all of the Company's assets or stock either directly or through one or more subsidiaries, the "Surviving Corporation") in substantially the same proportions as their ownership, immediately prior to such Reorganization, Sale or Acquisition, of the outstanding Company Common Stock and the outstanding Company Voting Securities, as the case may be, and (B) no person (other than (x) the Company or any Subsidiary of the Company, (y) the Surviving Corporation or its ultimate parent corporation, or (z) any employee benefit plan or related trust) sponsored or maintained by any of the foregoing is the beneficial owner, directly or indirectly, of 35% or more of the total common stock or 35% or more of the total voting power of the outstanding voting securities eligible to elect directors of the Surviving Corporation, and (C) at least a majority of the members of the board of directors of the Surviving Corporation were Incumbent Directors at the time of the Board's approval of the execution of the initial agreement providing for such Reorganization, Sale or Acquisition (any Reorganization, Sale or Acquisition which satisfies all of the criteria specified in (A), (B) and (C) above shall be deemed to be a "Non-Qualifying Transaction"); or

(iv) approval by the stockholders of the Company of a complete liquidation or dissolution of the Company.

(f) "Code" means the Internal Revenue Code of 1986, as amended from time to time. Reference to a specific Section of the Code or regulation thereunder shall include such Section or regulation, any valid regulation promulgated under such Section, and any comparable provision of any future law, legislation or regulation amending, supplementing or superseding such Section or regulation.

(g) "Committee" means the committee of the Board described in Article 4.

(h) "Company" means Micron Technology, Inc., a Delaware corporation, or any successor corporation.

(i) "Continuous Status as a Participant" means the absence of any interruption or termination of service as an employee, officer, consultant or non-employee director of the Company or any Affiliate, as applicable; provided, however, that for purposes of an Incentive Stock Option, or a Stock Appreciation Right issued in tandem with an Incentive Stock Option, "Continuous Status as a Participant" means the absence of any interruption or termination of service as an employee of the Company or any Parent or Subsidiary, as applicable, pursuant to applicable tax regulations. Continuous Status as a Participant shall not be considered interrupted in the case of any leave of absence authorized in writing by the Company

prior to its commencement; provided, however, that for purposes of Incentive Stock Options, no such leave may exceed 90 days, unless reemployment upon expiration of such leave is guaranteed by statute or contract. If reemployment upon expiration of a leave of absence approved by the Company is not so guaranteed, on the 91st day of such leave any Incentive Stock Option held by the Participant shall cease to be treated as an Incentive Stock Option and shall be treated for tax purposes as a Nonstatutory Stock Option.

(j) "Covered Employee" means a covered employee as defined in Code Section 162(m)(3).

(k) "Disability" or "Disabled" has the same meaning as provided in the long-term disability plan or policy maintained by the Company or if applicable, most recently maintained, by the Company or if applicable, an Affiliate, for the Participant, whether or not such Participant actually receives disability benefits under such plan or policy. If no long-term disability plan or policy was ever maintained on behalf of Participant or if the determination of Disability relates to an Incentive Stock Option, or a Stock Appreciation Right issued in tandem with an Incentive Stock Option, Disability means Permanent and Total Disability as defined in Section 22(e)(3) of the Code. Notwithstanding the foregoing, for any Awards that constitute a nonqualified deferred compensation plan within the meaning of Section 409A(d) of the Code, Disability has the meaning given such term in Section 409A of the Code. In the event of a dispute, the determination whether a Participant is Disabled will be made by the Committee and may be supported by the advice of a physician competent in the area to which such Disability relates.

(l) "Deferred Stock Unit" means a right granted to a Participant under Article 11.

(m) "Dividend Equivalent" means a right granted to a Participant under Article 12.

(n) "Effective Date" has the meaning assigned such term in Section 3.1.

(o) "Eligible Participant" means an employee, consultant or non-employee director of the Company or any Affiliate; provided, however, that no officer, including without limitation the chief executive officer of the Company, is eligible to be a Participant in the Plan.

(p) "Exchange" means the New York Stock Exchange or any other national securities exchange or national market system on which the Stock may from time to time be listed or traded.

(q) "Fair Market Value" of the Stock, on any date, means: (i) if the Stock is listed or traded on any Exchange, the closing sales price for such Stock (or the closing bid, if no sales were reported) as quoted on such Exchange (or, if more than one Exchange, the Exchange with the greatest volume of trading in the Stock) for such date, or if no sales or bids were reported for such date, on the last market trading day prior to the day of determination, as reported by Market Sweep, a service from Interactive Data Services, Inc., or such other source as the Committee deems reliable; (ii) if the Stock is quoted on the over-the-counter market or is regularly quoted by a recognized securities dealer, but selling prices are not reported, the Fair Market Value of the Stock shall be the mean between the high bid and low asked prices for the Stock on such date, or if no sales or bids were reported for such date, on the last market trading day prior to the day of determination, as reported by Market Sweep, a service from Interactive Data Services, Inc. or such other source as the Committee deems reliable, or (iii) in the absence of an established market for the Stock, the Fair Market Value shall be determined by such other method as the Committee determines in good faith to be reasonable and in compliance with Code Section 409A.

(r) "Full Value Award" means an Award other than in the form of an Option or SAR, and which is settled by the issuance of Stock.

(s) "Grant Date" of an Award means the first date on which all necessary corporate action has been taken to approve the grant of the Award as provided in the Plan, or such later date as is determined and specified as part of that authorization process. Notice of the grant shall be provided to the grantee within a reasonable time after the Grant Date.

- (t) "Incentive Stock Option" means an Option that is intended to be an incentive stock option and meets the requirements of Section 422 of the Code or any successor provision thereto.
- (u) "Non-Employee Director" means a director of the Company who is not a common law employee of the Company or an Affiliate.
- (v) "Nonstatutory Stock Option" means an Option that is not an Incentive Stock Option.
- (w) "Option" means a right granted to a Participant under Article 7 of the Plan to purchase Stock at a specified price during specified time periods. An Option may be either an Incentive Stock Option or a Nonstatutory Stock Option.
- (x) "Other Stock-Based Award" means a right, granted to a Participant under Article 13 that relates to or is valued by reference to Stock or other Awards relating to Stock.
- (y) "Parent" means a corporation, limited liability company, partnership or other entity which owns or beneficially owns a majority of the outstanding voting stock or voting power of the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Parent shall have the meaning set forth in Section 424(e) of the Code.
- (z) "Participant" means a person who, as an employee, non-employee director or consultant of the Company or any Affiliate, has been granted an Award under the Plan; provided that in the case of the death of a Participant, the term "Participant" refers to a beneficiary designated pursuant to Section 14.5 or the legal guardian or other legal representative acting in a fiduciary capacity on behalf of the Participant under applicable state law and court supervision. Notwithstanding the foregoing, a Participant shall not include the chief executive officer or any other officers of the Company.
- (aa) "Performance Share" means any right granted to a Participant under Article 9 to a unit to be valued by reference to a designated number of Shares to be paid upon achievement of such performance goals as the Committee establishes with regard to such Performance Share.
- (bb) "Person" means any individual, entity or group, within the meaning of Section 3(a)(9) of the 1934 Act and as used in Section 13(d)(3) or 14(d)(2) of the 1934 Act.
- (cc) "Plan" means the Micron Technology, Inc. 2007 Equity Incentive Plan, as amended from time to time.
- (dd) "Qualified Performance-Based Award" means an Award that is either (i) intended to qualify for the Section 162(m) Exemption and is made subject to performance goals based on Qualified Business Criteria as set forth in Section 14.10(b), or (ii) an Option or SAR.
- (ee) "Qualified Business Criteria" means one or more of the Business Criteria listed in Section 14.10(b) upon which performance goals for certain Qualified Performance-Based Awards may be established by the Committee.
- (ff) "Restricted Stock Award" means Stock granted to a Participant under Article 10 that is subject to certain restrictions and to risk of forfeiture.
- (gg) "Restricted Stock Unit Award" means the right granted to a Participant under Article 10 to receive shares of Stock (or the equivalent value in cash or other property if the Committee so provides) in the future, which right is subject to certain restrictions and to risk of forfeiture.
- (hh) "Section 162(m) Exemption" means the exemption from the limitation on deductibility imposed by Section 162(m) of the Code that is set forth in Section 162(m)(4)(C) of the Code or any successor provision thereto.

(ii) "Shares" means shares of the Company's Stock. If there has been an adjustment or substitution pursuant to Section 15.1, the term "Shares" shall also include any shares of stock or other securities that are substituted for Shares or into which Shares are adjusted pursuant to Section 15.1.

(jj) "Stock" means the \$.10 par value common stock of the Company and such other securities of the Company as may be substituted for Stock pursuant to Article 15.

(kk) "Stock Appreciation Right" or "SAR" means a right granted to a Participant under Article 8 to receive a payment equal to the difference between the Fair Market Value of a Share as of the date of exercise of the SAR over the base price of the SAR, all as determined pursuant to Article 8.

(ll) "Subsidiary" means any corporation, limited liability company, partnership or other entity of which a majority of the outstanding voting stock or voting power is beneficially owned directly or indirectly by the Company. Notwithstanding the above, with respect to an Incentive Stock Option, Subsidiary shall have the meaning set forth in Section 424(f) of the Code.

(mm) "1933 Act" means the Securities Act of 1933, as amended from time to time.

(nn) "1934 Act" means the Securities Exchange Act of 1934, as amended from time to time.

ARTICLE 3 EFFECTIVE TERM OF PLAN

3.1. *EFFECTIVE DATE.* The Plan shall be effective as of the date it is approved by both the Board and the stockholders of the Company (the "Effective Date").

3.2. *TERMINATION OF PLAN.* The Plan shall terminate on the tenth anniversary of the Effective Date unless earlier terminated as provided herein, which shall continue to be governed by the applicable terms and conditions of this Plan. The termination of the Plan on such date shall not affect the validity of any Award outstanding on the date of termination. No Incentive Stock Options may be granted more than ten years after the earlier of (a) adoption of this Plan by the Board, or (b) the Effective Date.

ARTICLE 4 ADMINISTRATION

4.1. *COMMITTEE.* The Plan shall be administered by a Committee appointed by the Board (which Committee shall consist of at least two directors) or, at the discretion of the Board from time to time, the Plan may be administered by the Board. It is intended that at least two of the directors appointed to serve on the Committee shall be "non-employee directors" (within the meaning of Rule 16b-3 promulgated under the 1934 Act) and "outside directors" (within the meaning of Code Section 162(m)) and that any such members of the Committee who do not so qualify shall abstain from participating in any decision to make or administer Awards that are made to Eligible Participants who at the time of consideration for such Award (i) are persons subject to the short-swing profit rules of Section 16 of the 1934 Act, or (ii) are reasonably anticipated to become Covered Employees during the term of the Award. However, the mere fact that a Committee member shall fail to qualify under either of the foregoing requirements or shall fail to abstain from such action shall not invalidate any Award made by the Committee which Award is otherwise validly made under the Plan. The members of the Committee shall be appointed by, and may be changed at any time and from time to time in the discretion of, the Board. The Board may reserve to itself any or all of the authority and responsibility of the Committee under the Plan or may act as administrator of the Plan for any and all purposes. To the extent the Board has reserved any authority and responsibility or during any time that the Board is acting as administrator of the Plan, it shall have all the powers of the Committee hereunder, and any reference herein to the Committee (other than in this Section 4.1) shall include the Board. To the extent any action of the Board under the Plan conflicts with actions taken by the Committee, the actions of the Board shall control.

4.2. *ACTION AND INTERPRETATIONS BY THE COMMITTEE.* For purposes of administering the Plan, the Committee may from time to time adopt rules, regulations, guidelines and procedures for carrying out the provisions and purposes of the Plan and make such other determinations, not inconsistent with the Plan, as the

Committee may deem appropriate. The Committee's interpretation of the Plan, any Awards granted under the Plan, any Award Certificate and all decisions and determinations by the Committee with respect to the Plan are final, binding, and conclusive on all parties. Each member of the Committee is entitled to, in good faith, rely or act upon any report or other information furnished to that member by any officer or other employee of the Company or any Affiliate, the Company's or an Affiliate's independent certified public accountants, Company counsel or any executive compensation consultant or other professional retained by the Company to assist in the administration of the Plan.

4.3. *AUTHORITY OF COMMITTEE.* Except as provided below, the Committee has the exclusive power, authority and discretion to:

- (a) Grant Awards;
- (b) Designate Participants;
- (c) Determine the type or types of Awards to be granted to each Participant;
- (d) Determine the number of Awards to be granted and the number of Shares or dollar amount to which an Award will relate;
- (e) Determine the terms and conditions of any Award granted under the Plan, including but not limited to, the exercise price, base price, or purchase price, any restrictions or limitations on the Award, any schedule for lapse of forfeiture restrictions or restrictions on the exercisability of an Award, and accelerations or waivers thereof, based in each case on such considerations as the Committee in its sole discretion determines;
- (f) Accelerate the vesting, exercisability or lapse of restrictions of any outstanding Award, in accordance with Article 14, based in each case on such considerations as the Committee in its sole discretion determines;
- (g) Determine whether, to what extent, and under what circumstances an Award may be settled in, or the exercise price of an Award may be paid in, cash, Stock, other Awards, or other property, or an Award may be canceled, forfeited, or surrendered;
- (h) Prescribe the form of each Award Certificate, which need not be identical for each Participant;
- (i) Decide all other matters that must be determined in connection with an Award;
- (j) Establish, adopt or revise any rules, regulations, guidelines or procedures as it may deem necessary or advisable to administer the Plan;
- (k) Make all other decisions and determinations that may be required under the Plan or as the Committee deems necessary or advisable to administer the Plan;
- (l) Amend the Plan or any Award Certificate as provided herein; and
- (m) Adopt such modifications, procedures, and subplans as may be necessary or desirable to comply with provisions of the laws of non-U.S. jurisdictions in which the Company or any Affiliate may operate, in order to assure the viability of the benefits of Awards granted to participants located in such other jurisdictions and to meet the objectives of the Plan.

Notwithstanding the foregoing, grants of Awards to Non-Employee Directors hereunder shall be made only in accordance with the terms, conditions and parameters of a plan, program or policy for the compensation of Non-Employee Directors as in effect from time to time, and the Committee may not make discretionary grants hereunder to Non-Employee Directors.

Notwithstanding the above, the Board may, by resolution, expressly delegate to a special committee, consisting of one or more directors who may but need not be officers of the Company, the authority, within specified parameters, to (i) designate officers, employees and/or consultants of the Company or any of its Affiliates to be recipients of Awards under the Plan, and (ii) to determine the number of such Awards to be received by any such Participants; provided, however, that such delegation of duties and responsibilities to an officer of the Company may not be made with respect to the grant of Awards to eligible participants (a) who are subject to Section 16(a) of the 1934 Act at the Grant Date, or (b) who as of the Grant Date are reasonably anticipated to become Covered Employees during the term of the Award. The acts of such delegates shall be treated hereunder as acts of the Board and such delegates shall report regularly to the Board and the Compensation Committee regarding the delegated duties and responsibilities and any Awards so granted.

4.4. *AWARD CERTIFICATES.* Each Award shall be evidenced by an Award Certificate. Each Award Certificate shall include such provisions, not inconsistent with the Plan, as may be specified by the Committee.

ARTICLE 5

SHARES SUBJECT TO THE PLAN

5.1. *NUMBER OF SHARES.* Subject to adjustment as provided in Sections 5.2 and 15.1, the aggregate number of Shares reserved and available for issuance pursuant to Awards granted under the Plan shall be 40,000,000; provided, however, that each Share issued under the Plan pursuant to a Full Value Award shall reduce the number of available Shares by two (2) shares. The maximum number of Shares that may be issued upon exercise of Incentive Stock Options granted under the Plan shall be 2,000,000.

5.2. *SHARE COUNTING.* Shares covered by an Award shall be subtracted from the Plan share reserve as of the date of grant, but shall be added back to the Plan share reserve in accordance with this Section 5.2.

(a) To the extent that an Award is canceled, terminates, expires, is forfeited or lapses for any reason, any unissued or forfeited Shares subject to the Award will again be available for issuance pursuant to Awards granted under the Plan.

(b) Shares subject to Awards settled in cash will again be available for issuance pursuant to Awards granted under the Plan.

(c) Substitute Awards granted pursuant to Section 14.14 of the Plan shall not count against the Shares otherwise available for issuance under the Plan under Section 5.1.

5.3. *STOCK DISTRIBUTED.* Any Stock distributed pursuant to an Award may consist, in whole or in part, of authorized and unissued Stock, treasury Stock or Stock purchased on the open market.

5.4. *LIMITATION ON AWARDS.* Notwithstanding any provision in the Plan to the contrary (but subject to adjustment as provided in Section 15.1), the maximum number of Shares with respect to one or more Options and/or SARs that may be granted during any one calendar year under the Plan to any one Participant shall be 2,000,000. The maximum aggregate grant with respect to Awards of Restricted Stock, Restricted Stock Units, Deferred Stock Units, Performance Shares or other Stock-Based Awards (other than Options or SARs) granted in any one calendar year to any one Participant shall be 2,000,000.

ARTICLE 6

ELIGIBILITY

6.1. *GENERAL.* Awards may be granted only to Eligible Participants; except that Incentive Stock Options may be granted to only to Eligible Participants who are employees of the Company or a Parent or Subsidiary as defined in Section 424(e) and (f) of the Code. Eligible Participants who are service providers to an Affiliate may be granted Options or SARs under this Plan only if the Affiliate qualifies as an "eligible issuer of service recipient stock" within the meaning of §1.409A-1(b)(5)(iii)(E) of the final regulations under Code Section 409A.

ARTICLE 7
STOCK OPTIONS

7.1. *GENERAL.* The Committee is authorized to grant Options to Participants on the following terms and conditions:

- (a) **EXERCISE PRICE.** The exercise price per Share under an Option shall be determined by the Committee; provided that the exercise price for any Option (other than an Option issued as a substitute Award pursuant to Section 14.14) shall not be less than the Fair Market Value as of the Grant Date.
- (b) **PROHIBITION ON REPRICING.** Except as otherwise provided in Section 15.1, the exercise price of an Option may not be reduced, directly or indirectly by cancellation and regrant or otherwise, without the prior approval of the shareholders of the Company.
- (c) **TIME AND CONDITIONS OF EXERCISE.** The Committee shall determine the time or times at which an Option may be exercised in whole or in part, subject to Section 7.1(e). The Committee shall also determine the performance or other conditions, if any, that must be satisfied before all or part of an Option may be exercised or vested.
- (d) **PAYMENT.** The Committee shall determine the methods by which the exercise price of an Option may be paid, the form of payment, including, without limitation, cash, Shares, or other property (including "cashless exercise" arrangements), and the methods by which Shares shall be delivered or deemed to be delivered to Participants.
- (e) **EXERCISE TERM.** No option granted under the Plan shall be exercisable for more than six years from the Grant Date..
- (f) **NO DEFERRAL FEATURE.** No Option shall provide for any feature for the deferral of compensation other than the deferral of recognition of income until the exercise or disposition of the Option.
- (g) **SUSPENSION.** Any Participant who is also a participant in the Retirement at Micron ("RAM") Section 401(k) Plan and who requests and receives a hardship distribution from the RAM Plan, is prohibited from making, and must suspend, his or her employee elective contributions and employee contributions including, without limitation on the foregoing, the exercise of any Option granted from the date of receipt by that employee of the RAM hardship distribution.

7.2. *INCENTIVE STOCK OPTIONS.* The terms of any Incentive Stock Options granted under the Plan must comply with the requirements of Section 422 of the Code. If all of the requirements of Section 422 of the Code are not met, the Option shall automatically become a Nonstatutory Stock Option.

ARTICLE 8
STOCK APPRECIATION RIGHTS

8.1. *GRANT OF STOCK APPRECIATION RIGHTS.* The Committee is authorized to grant Stock Appreciation Rights to Participants on the following terms and conditions:

- (a) **RIGHT TO PAYMENT.** Upon the exercise of a Stock Appreciation Right, the Participant to whom it is granted has the right to receive the excess, if any, of:
 - (1) The Fair Market Value of one Share on the date of exercise; over
 - (2) The base price of the Stock Appreciation Right as determined by the Committee, which shall not be less than the Fair Market Value of one Share on the Grant Date.

(b) PROHIBITION ON REPRICING. Except as otherwise provided in Section 15.1, the base price of a SAR may not be reduced, directly or indirectly by cancellation and regrant or otherwise, without the prior approval of the shareholders of the Company.

(c) EXERCISE TERM. No SAR granted under the Plan shall be exercisable for more than six years from the Grant Date.

(d) NO DEFERRAL FEATURE. No SAR shall provide for any feature for the deferral of compensation other than the deferral of recognition of income until the exercise or disposition of the SAR.

(e) OTHER TERMS. All awards of Stock Appreciation Rights shall be evidenced by an Award Certificate. Subject to the limitations of this Article 8, the terms, methods of exercise, methods of settlement, form of consideration payable in settlement, and any other terms and conditions of any Stock Appreciation Right shall be determined by the Committee at the time of the grant of the Award and shall be reflected in the Award Certificate.

ARTICLE 9

PERFORMANCE SHARES

9.1. *GRANT OF PERFORMANCE SHARES.* The Committee is authorized to grant Performance Shares to Participants on such terms and conditions as may be selected by the Committee. The Committee shall have the complete discretion to determine the number of Performance Shares granted to each Participant, subject to Section 5.4, and to designate the provisions of such Performance Shares as provided in Section 4.3. All Performance Shares shall be evidenced by an Award Certificate or a written program established by the Committee, pursuant to which Performance Shares are awarded under the Plan under uniform terms, conditions and restrictions set forth in such written program.

9.2. *PERFORMANCE GOALS.* The Committee may establish performance goals for Performance Shares which may be based on any criteria selected by the Committee. Such performance goals may be described in terms of Company-wide objectives or in terms of objectives that relate to the performance of the Participant, an Affiliate or a division, region, department or function within the Company or an Affiliate. If the Committee determines that a change in the business, operations, corporate structure or capital structure of the Company or the manner in which the Company or an Affiliate conducts its business, or other events or circumstances render performance goals to be unsuitable, the Committee may modify such performance goals in whole or in part, as the Committee deems appropriate. If a Participant is promoted, demoted or transferred to a different business unit or function during a performance period, the Committee may determine that the performance goals or performance period are no longer appropriate and may (i) adjust, change or eliminate the performance goals or the applicable performance period as it deems appropriate to make such goals and period comparable to the initial goals and period, or (ii) make a cash payment to the participant in amount determined by the Committee. The foregoing two sentences shall not apply with respect to an Award of Performance Shares that is intended to be a Qualified Performance-Based Award.

9.3. *RIGHT TO PAYMENT.* The grant of a Performance Share to a Participant will entitle the Participant to receive at a specified later time a specified number of Shares, or the equivalent value in cash or other property, if the performance goals established by the Committee are achieved and the other terms and conditions thereof are satisfied. The Committee shall set performance goals and other terms or conditions to payment of the Performance Shares in its discretion which, depending on the extent to which they are met, will determine the number of the Performance Shares that will be earned by the Participant.

9.4. *OTHER TERMS.* Performance Shares may be payable in cash, Stock, or other property, and have such other terms and conditions as determined by the Committee and reflected in the Award Certificate.

ARTICLE 10

RESTRICTED STOCK AND RESTRICTED STOCK UNIT AWARDS

10.1. *GRANT OF RESTRICTED STOCK AND RESTRICTED STOCK UNITS.* Subject to the terms and

conditions of this Article 10, the Committee is authorized to make Awards of Restricted Stock or Restricted Stock Units to Participants in such amounts and subject to such terms and conditions as may be selected by the Committee. An Award of Restricted Stock or Restricted Stock Units shall be evidenced by an Award Certificate setting forth the terms, conditions, and restrictions applicable to the Award.

10.2. *ISSUANCE AND RESTRICTIONS.* Restricted Stock or Restricted Stock Units shall be subject to such restrictions on transferability and other restrictions as the Committee may impose (including, without limitation, limitations on the right to vote Restricted Stock or the right to receive dividends on the Restricted Stock); provided, however, at a minimum, all Restricted Stock and Restricted Stock Units shall be subject to the restrictions set forth in Section 14.4 for a period of no less than (a) one year from the date of award with respect to Restricted Stock or Restricted Stock Units subject to restrictions that lapse based upon satisfaction of performance goals, and (b) three years from the date of award with respect to Restricted Stock or Restricted Stock Units subject to time-based restrictions that lapse based upon one's Continuous Status as a Participant. For avoidance of doubt, nothing in the foregoing shall preclude any applicable restriction, including those set forth in Section 14.4 hereof, from lapsing ratably, including, but not limited to, roughly annual increments over three years, with respect to the Restricted Stock or Restricted Stock Units referred to in Section 10.2(b). Moreover, nothing in the foregoing shall preclude or be interpreted to preclude Awards to Non-employee Directors from containing a period of restriction shorter than that set forth above. Finally, nothing in this Section 10.2 shall be deemed or interpreted to preclude the waiver, lapse or the acceleration of lapse, of any restrictions with respect to Restricted Stock or Restricted Stock Units in accordance with or as permitted by Sections 14.7 through Section 14.9, respectively, Article 15 or any other provision of the Plan. Subject to the remaining terms and conditions of the Plan, these restrictions may lapse separately or in combination at such times, under such circumstances, in such installments, upon the satisfaction of performance goals or otherwise, as the Committee determines at the time of the grant of the Award or thereafter. Except as otherwise provided in an Award Certificate or any special Plan document governing an Award, the Participant shall have all of the rights of a stockholder with respect to the Restricted Stock, and the Participant shall have none of the rights of a stockholder with respect to Restricted Stock Units until such time as Shares of Stock are paid in settlement of the Restricted Stock Units.

10.3. *FORFEITURE.* Except as otherwise determined by the Committee at the time of the grant of the Award or thereafter, upon termination of Continuous Status as a Participant during the applicable restriction period or upon failure to satisfy a performance goal during the applicable restriction period, Restricted Stock or Restricted Stock Units that are at that time subject to restrictions shall be forfeited; provided, however, that the Committee may provide in any Award Certificate, subject to the terms and conditions of the Plan, that restrictions or forfeiture conditions relating to Restricted Stock or Restricted Stock Units will be waived in whole or in part in the event of terminations resulting from specified causes, including, but not limited to, death, Disability, or for the convenience or in the best interests of the Company.

10.4. *DELIVERY OF RESTRICTED STOCK.* Shares of Restricted Stock shall be delivered to the Participant at the time of grant either by book-entry registration or by delivering to the Participant, or a custodian or escrow agent (including, without limitation, the Company or one or more of its employees) designated by the Committee, a stock certificate or certificates registered in the name of the Participant. If physical certificates representing shares of Restricted Stock are registered in the name of the Participant, such certificates must bear an appropriate legend referring to the terms, conditions, and restrictions applicable to such Restricted Stock.

ARTICLE 11 DEFERRED STOCK UNITS

11.1. *GRANT OF DEFERRED STOCK UNITS.* The Committee is authorized to grant Deferred Stock Units to Participants subject to such terms and conditions as may be selected by the Committee. Deferred Stock Units shall entitle the Participant to receive Shares of Stock (or the equivalent value in cash or other property if so determined by the Committee) at a future time as determined by the Committee, or as determined by the Participant within guidelines established by the Committee in the case of voluntary deferral elections. An Award of Deferred Stock Units shall be evidenced by an Award Certificate setting forth the terms and conditions applicable to the Award.

ARTICLE 12

DIVIDEND EQUIVALENTS

12.1. *GRANT OF DIVIDEND EQUIVALENTS.* The Committee is authorized to grant Dividend Equivalents to Participants subject to such terms and conditions as may be selected by the Committee. Dividend Equivalents shall entitle the Participant to receive payments equal to dividends with respect to all or a portion of the number of Shares subject to an Award, as determined by the Committee. The Committee may provide that Dividend Equivalents be paid or distributed when accrued or be deemed to have been reinvested in additional Shares, or otherwise reinvested. Unless otherwise provided in the applicable Award Certificate, Dividend Equivalents will be paid or distributed no later than the 15th day of the 3rd month following the later of (i) the calendar year in which the corresponding dividends were paid to shareholders, or (ii) the first calendar year in which the Participant's right to such Dividends Equivalents is no longer subject to a substantial risk of forfeiture.

ARTICLE 13 STOCK OR OTHER STOCK-BASED AWARDS

13.1. *GRANT OF STOCK OR OTHER STOCK-BASED AWARDS.* The Committee is authorized, subject to limitations under applicable law, to grant to Participants such other Awards that are payable in, valued in whole or in part by reference to, or otherwise based on or related to Shares, as deemed by the Committee to be consistent with the purposes of the Plan, including without limitation Shares awarded purely as a "bonus" and not subject to any restrictions or conditions, convertible or exchangeable debt securities, other rights convertible or exchangeable into Shares, and Awards valued by reference to book value of Shares or the value of securities of or the performance of specified Parents or Subsidiaries. The Committee shall determine the terms and conditions of such Awards.

ARTICLE 14 PROVISIONS APPLICABLE TO AWARDS

14.1. *STAND-ALONE AND TANDEM AWARDS.* Awards granted under the Plan may, in the discretion of the Committee, be granted either alone or in addition to, in tandem with, any other Award granted under the Plan. Subject to Section 16.2, awards granted in addition to or in tandem with other Awards may be granted either at the same time as or at a different time from the grant of such other Awards.

14.2. *TERM OF AWARD.* The term of each Award shall be for the period as determined by the Committee, provided that in no event shall the term of any Incentive Stock Option or a Stock Appreciation Right granted in tandem with the Incentive Stock Option exceed a period of ten years from its Grant Date.

14.3. *FORM OF PAYMENT FOR AWARDS.* Subject to the terms of the Plan and any applicable law or Award Certificate, payments or transfers to be made by the Company or an Affiliate on the grant or exercise of an Award may be made in such form as the Committee determines at or after the Grant Date, including without limitation, cash, Stock, other Awards, or other property, or any combination, and may be made in a single payment or transfer, in installments, or (except with respect to Options or SARs) on a deferred basis, in each case determined in accordance with rules adopted by, and at the discretion of, the Committee.

14.4. *LIMITS ON TRANSFER.* No right or interest of a Participant in any unexercised or restricted Award may be pledged, encumbered, or hypothecated to or in favor of any party other than the Company or an Affiliate, or shall be subject to any lien, obligation, or liability of such Participant to any other party other than the Company or an Affiliate. No unexercised or restricted Award shall be assignable or transferable by a Participant other than by will or the laws of descent and distribution or, except in the case of an Incentive Stock Option, pursuant to a domestic relations order that would satisfy Section 414(p)(1)(A) of the Code if such Section applied to an Award under the Plan; provided, however, that the Committee may (but need not) permit other transfers where the Committee concludes that such transferability (i) does not result in accelerated taxation, (ii) does not cause any Option intended to be an Incentive Stock Option to fail to be described in Code Section 422(b), and (iii) is otherwise appropriate and desirable, taking into account any factors deemed relevant, including without limitation, state or federal tax or securities laws applicable to transferable Awards.

14.5. *BENEFICIARIES.* Notwithstanding Section 14.4, a Participant may, in the manner determined by the Committee, designate a beneficiary to exercise the rights of the Participant and to receive any distribution with

respect to any Award upon the Participant's death. A beneficiary, legal guardian, legal representative, or other person claiming any rights under the Plan is subject to all terms and conditions of the Plan and any Award Certificate applicable to the Participant, except to the extent the Plan and Award Certificate otherwise provide, and to any additional restrictions deemed necessary or appropriate by the Committee. If no beneficiary has been designated or survives the Participant, payment shall be made to the Participant's estate. Subject to the foregoing, a beneficiary designation may be changed or revoked by a Participant at any time provided the change or revocation is filed with the Committee.

14.6. *STOCK TRADING RESTRICTIONS.* All Stock issuable under the Plan is subject to any stop-transfer orders and other restrictions as the Committee deems necessary or advisable to comply with federal or state securities laws, rules and regulations and the rules of any national securities exchange or automated quotation system on which the Stock is listed, quoted, or traded. The Committee may place legends on any Stock certificate or issue instructions to the transfer agent to reference restrictions applicable to the Stock.

14.7. *ACCELERATION UPON A CHANGE IN CONTROL.* Except as otherwise provided in the Award Certificate or any special Plan document governing an Award, upon the occurrence of a Change in Control, all outstanding Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully exercisable, and all time-based vesting restrictions on outstanding Awards shall lapse. Except as otherwise provided in the Award Certificate or any special Plan document governing an Award, upon the occurrence of a Change in Control, the target payout opportunities attainable under all outstanding performance-based Awards shall be deemed to have been fully earned as of the effective date of the Change in Control based upon an assumed achievement of all relevant performance goals at the "target" level and there shall be prorata payout to Participants within thirty (30) days following the effective date of the Change in Control (or any later date required by Section 17.3 of the Plan) based upon the length of time within the performance period that has elapsed prior to the Change in Control.

14.8. *ACCELERATION UPON DEATH OR DISABILITY.* Except as otherwise provided in the Award Certificate or any special Plan document governing an Award, upon the Participant's death or Disability during his or her Continuous Status as a Participant, (i) all of such Participant's outstanding Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully exercisable, (ii) all time-based vesting restrictions on the Participant's outstanding Awards shall lapse, and (iii) the target payout opportunities attainable under all of such Participant's outstanding performance-based Awards shall be deemed to have been fully earned as of the date of termination based upon an assumed achievement of all relevant performance goals at the "target" level and there shall be a prorata payout to the Participant or his or her estate within thirty (30) days following the date of termination (or any later date required by Section 17.3 of the Plan) based upon the length of time within the performance period that has elapsed prior to the date of termination. Any Awards shall thereafter continue or lapse in accordance with the other provisions of the Plan and the Awards Certificate. To the extent that this provision causes Incentive Stock Options to exceed the dollar limitation set forth in Code Section 422(d), the excess Options shall be deemed to be Nonstatutory Stock Options.

14.9. *ACCELERATION FOR ANY OTHER REASON.* Regardless of whether an event has occurred as described in Section 14.7 or 14.8 above, and subject to Section 14.11 as to Qualified Performance-Based Awards, the Committee may in its sole discretion at any time determine that all or a portion of a Participant's Options, SARs, and other Awards in the nature of rights that may be exercised shall become fully or partially exercisable, that all or a part of the time-based vesting restrictions on all or a portion of the outstanding Awards shall lapse, and/or that any performance-based criteria with respect to any Awards shall be deemed to be wholly or partially satisfied, in each case, as of such date as the Committee may, in its sole discretion, declare; provided, however, the Committee shall not exercise such discretion with respect to Full Value Awards comprised of Shares of Restricted Stock or Restricted Stock Units which, in the aggregate, exceed five percent (5%) of the aggregate number of Shares reserved and available for issuance pursuant to Awards granted under the Plan; provided, further, that when calculating whether the five percent (5%) maximum has been reached, the Committee shall not count or consider any Shares of Restricted Stock or Restricted Stock Units granted to Non-Employee Directors or regarding which the Committee accelerated vesting rights, waived restrictions or determined performance-based criteria had been satisfied resulting from an event described in Section 14.7, Article 15, a Participant's termination of employment or separation from service resulting from death, Disability or for the convenience or in the bests interests of the Company. The Committee may discriminate among Participants and among Awards granted to a Participant in exercising its discretion pursuant to this Section 14.9.

14.10. *EFFECT OF ACCELERATION.* If an Award is accelerated under Section 14.7, Section 14.8 or Section 14.9, the Committee may, in its sole discretion, provide (i) that the Award will expire after a designated period of time after such acceleration to the extent not then exercised, (ii) that the Award will be settled in cash rather than Stock, (iii) that the Award will be assumed by another party to a transaction giving rise to the acceleration or otherwise be equitably converted or substituted in connection with such transaction, (iv) that the Award may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Stock, as of a specified date associated with the transaction, over the exercise price of the Award, or (v) any combination of the foregoing. The Committee's determination need not be uniform and may be different for different Participants whether or not such Participants are similarly situated. To the extent that such acceleration causes Incentive Stock Options to exceed the dollar limitation set forth in Code Section 422(d), the excess Options shall be deemed to be Nonstatutory Stock Options.

14.11. *QUALIFIED PERFORMANCE-BASED AWARDS.*

(a) The provisions of the Plan are intended to ensure that all Options and Stock Appreciation Rights granted hereunder to any Covered Employee shall qualify for the Section 162(m) Exemption; provided that the exercise or base price of such Award is not less than the Fair Market Value of the Shares on the Grant Date.

(b) When granting any other Award, the Committee may designate such Award as a Qualified Performance-Based Award, based upon a determination that the recipient is or may be a Covered Employee with respect to such Award, and the Committee wishes such Award to qualify for the Section 162(m) Exemption. If an Award is so designated, the Committee shall establish performance goals for such Award within the time period prescribed by Section 162(m) of the Code based on one or more of the following Qualified Business Criteria, which may be expressed in terms of Company-wide objectives or in terms of objectives that relate to the performance of an Affiliate or a unit, division, region, department or function within the Company or an Affiliate:

- Gross and/or net revenue (including whether in the aggregate or attributable to specific products)
- Cost of Goods Sold and Gross Margin
- Costs and expenses, including Research & Development and Selling, General & Administrative
- Income (gross, operating, net, etc.)
- Earnings, including before interest, taxes, depreciation and amortization (whether in the aggregate or on a per share basis)
- Cash flows and share price
- Return on investment, capital, equity
- Manufacturing efficiency (including yield enhancement and cycle time reductions), quality improvements and customer satisfaction
- Product life cycle management (including product and technology design, development, transfer, manufacturing introduction, and sales price optimization and management)
- Economic profit or loss
- Market share
- Employee retention, compensation, training and development, including succession planning

- Objective goals consistent with the Participant's specific duties and responsibilities, designed to further the financial, operational and other business interests of the Company, including goals and objectives with respect to regulatory compliance matters.

Performance goals with respect to the foregoing Qualified Business Criteria may be specified in absolute terms (including completion of pre-established projects, such as the introduction of specified products), in percentages, or in terms of growth from period to period or growth rates over time as well as measured relative to an established or specially-created performance index of Company competitors, peers or other members of high tech industries. Any member of an index that disappears during a measurement period shall be disregarded for the entire measurement period. Performance Goals need not be based upon an increase or positive result under a business criterion and could include, for example, the maintenance of the status quo or the limitation of economic losses (measured, in each case, by reference to a specific business criterion).

(c) Each Qualified Performance-Based Award (other than an Option or SAR) shall be earned, vested and payable (as applicable) only upon the achievement of performance goals established by the Committee based upon one or more of the Qualified Business Criteria, together with the satisfaction of any other conditions, including the condition as to continued employment as set forth in subsection (g) below, as the Committee may determine to be appropriate; provided, however, that the Committee may provide, in its sole and absolute discretion, either in connection with the grant thereof or by amendment thereafter, that achievement of such performance goals will be waived upon the death or Disability of the Participant, or upon a Change in Control. In addition, the Committee has the right, in connection with the grant of a Qualified Performance-Based Award, to exercise negative discretion to determine that the portion of such Award actually earned, vested and /or payable (as applicable) shall be less than the portion that would be earned, vested and/or payable based solely upon application of the applicable performance goals. Performance periods established by the Committee for any such Qualified Performance-Based Award may be as short as ninety (90) days and may be any longer period.

(d) The Committee may provide in any Qualified Performance-Based Award, at the time the performance goals are established, that any evaluation of performance shall include, exclude or otherwise equitably adjust for any of the following events that occurs during a performance period: (a) asset write-downs or impairment charges; (b) litigation or claim judgments or settlements; (c) the effect of changes in tax laws, accounting principles or other laws or provisions affecting reported results; (d) accruals for reorganization and restructuring programs; (e) extraordinary nonrecurring items as described in Accounting Principles Board Opinion No. 30 and /or in management's discussion and analysis of financial condition and results of operations appearing in the Company's annual report to stockholders for the applicable year; (f) acquisitions or divestitures; and (g) foreign exchange gains and losses. To the extent such inclusions or exclusions affect Awards to Covered Employees, they shall be prescribed in a form and at a time that meets the requirements of Code Section 162(m) for deductibility.

(e) Any payment of a Qualified Performance-Based Award granted with performance goals pursuant to subsection (c) above shall be conditioned on the written certification of the Committee in each case that the performance goals and any other material conditions were satisfied. Written certification may take the form of a Committee resolution passed by a majority of the Committee at a properly convened meeting or through unanimous action by the Committee via action by written consent. The certification requirement also may be satisfied by a separate writing executed by the Chairman of the Committee, acting in his capacity as such, following the foregoing Committee action or by the Chairman executing approved minutes of the Committee in which such determinations were made. Except as specifically provided in subsection (c), no Qualified Performance-Based Award held by a Covered Employee or an employee who in the reasonable judgment of the Committee may be a Covered Employee on the date of payment, may be amended, nor may the Committee exercise any discretionary authority it may otherwise have under the Plan with respect to a Qualified Performance-Based Award under the Plan, in any manner to waive the achievement of the applicable performance goal based on Qualified Business Criteria or to increase the amount payable pursuant thereto or the value thereof, or otherwise in a manner that would cause the Qualified Performance-Based Award to cease to qualify for the Section 162(m) Exemption.

(f) Section 5.4 sets forth the maximum number of Shares that may be granted in any one-year period to a Participant in designated forms of stock-based Awards.

(g) With respect to a Participant who is an officer of the Company, any payment of a Qualified Performance-Based Award granted with performance goals pursuant to subsection (c) above shall be conditioned on the officer having remained continuously employed by the Company or an Affiliate for the entire performance or measurement period, including, as well, through the date of determination and certification of the payment of any such Award pursuant to subsection (e) above (the "Certification Date"). For purposes of the Plan, with respect to any given performance or measurement period, an officer of the Company (i) who terminates employment (regardless of cause) or who otherwise ceases to be an officer, prior to the Certification Date, and (ii) who, pursuant to a separate contractual arrangement with the Company is entitled to receive payments from the Company thereunder extending to or beyond such Certification Date as a result of such termination or cessation in officer status, shall be deemed to have been employed by the Company as an officer through the Certification Date for purposes of payment eligibility.

14.12. *TERMINATION OF EMPLOYMENT.* Whether military, government or other service or other leave of absence shall constitute a termination of employment shall be determined in each case by the Committee at its discretion, and any determination by the Committee shall be final and conclusive. A Participant's Continuous Status as a Participant shall not be deemed to terminate (i) in a circumstance in which a Participant transfers from the Company to an Affiliate, transfers from an Affiliate to the Company, or transfers from one Affiliate to another Affiliate, or (ii) in the discretion of the Committee as specified at or prior to such occurrence, in the case of a spin-off, sale or disposition of the Participant's employer from the Company or any Affiliate. To the extent that this provision causes Incentive Stock Options to extend beyond three months from the date a Participant is deemed to be an employee of the Company, a Parent or Subsidiary for purposes of Sections 424(e) and 424(f) of the Code, the Options held by such Participant shall be deemed to be Nonstatutory Stock Options.

14.13. *FORFEITURE EVENTS.* The Committee may specify in an Award Certificate that the Participant's rights, payments and benefits with respect to an Award shall be subject to reduction, cancellation, forfeiture or recoupment upon the occurrence of certain specified events, in addition to any otherwise applicable vesting or performance conditions of an Award. Such events shall include, but shall not be limited to, termination of employment for cause, violation of material Company or Affiliate policies, breach of noncompetition, confidentiality or other restrictive covenants that may apply to the Participant, or other conduct by the Participant that is detrimental to the business or reputation of the Company or any Affiliate.

14.14. *SUBSTITUTE AWARDS.* The Committee may grant Awards under the Plan in substitution for stock and stock-based awards held by employees of another entity who become employees of the Company or an Affiliate as a result of a merger or consolidation of the former employing entity with the Company or an Affiliate or the acquisition by the Company or an Affiliate of property or stock of the former employing corporation. The Committee may direct that the substitute awards be granted on such terms and conditions as the Committee considers appropriate in the circumstances.

ARTICLE 15
CHANGES IN CAPITAL STRUCTURE

15.1. **MANDATORY ADJUSTMENTS.** In the event of a nonreciprocal transaction between the Company and its stockholders that causes the per-share value of the Stock to change (including, without limitation, any stock dividend, stock split, spin-off, rights offering, or large nonrecurring cash dividend), the authorization limits under Section 5.1 and 5.4 shall be adjusted proportionately, and the Committee shall make such adjustments to the Plan and Awards as it deems necessary, in its sole discretion, to prevent dilution or enlargement of rights immediately resulting from such transaction. Action by the Committee may include: (i) adjustment of the number and kind of shares that may be delivered under the Plan; (ii) adjustment of the number and kind of shares subject to outstanding Awards; (iii) adjustment of the exercise price of outstanding Awards or the measure to be used to determine the amount of the benefit payable on an Award; and (iv) any other adjustments that the Committee determines to be equitable. Without limiting the foregoing, in the event of a subdivision of the outstanding Stock (stock-split), a declaration of a dividend payable in Shares, or a combination or consolidation of the outstanding Stock into a lesser number of Shares, the authorization limits under Section 5.1 and 5.4 shall automatically be adjusted proportionately, and the Shares then subject to each Award shall automatically, without the necessity for any additional action by the Committee, be adjusted proportionately without any change in the aggregate purchase price therefor.

15.2. **DISCRETIONARY ADJUSTMENTS.** Upon the occurrence or in anticipation of any corporate event or transaction involving the Company (including, without limitation, any merger, reorganization, recapitalization, combination or exchange of shares, or any transaction described in Section 15.1), the Committee may, in its sole discretion, provide (i) that Awards will be settled in cash rather than Stock, (ii) that Awards will become immediately vested and exercisable and will expire after a designated period of time to the extent not then exercised, (iii) that Awards will be assumed by another party to a transaction or otherwise be equitably converted or substituted in connection with such transaction, (iv) that outstanding Awards may be settled by payment in cash or cash equivalents equal to the excess of the Fair Market Value of the underlying Stock, as of a specified date associated with the transaction, over the exercise price of the Award, (v) that performance targets and performance periods for Performance Awards will be modified, consistent with Code Section 162(m) where applicable, or (vi) any combination of the foregoing. The Committee's determination need not be uniform and may be different for different Participants whether or not such Participants are similarly situated.

15.3. **GENERAL.** Any discretionary adjustments made pursuant to this Article 15 shall be subject to the provisions of Section 16.2. To the extent that any adjustments made pursuant to this Article 15 cause Incentive Stock Options to cease to qualify as Incentive Stock Options, such Options shall be deemed to be Nonstatutory Stock Options.

ARTICLE 16
AMENDMENT, MODIFICATION AND TERMINATION

16.1. **AMENDMENT, MODIFICATION AND TERMINATION.** The Board or the Committee may, at any time and from time to time, amend, modify or terminate the Plan without stockholder approval; provided, however, that if an amendment to the Plan would, in the reasonable opinion of the Board or the Committee, either (i) materially increase the number of Shares available under the Plan, (ii) expand the types of awards under the Plan, (iii) materially expand the class of participants eligible to participate in the Plan, (iv) materially extend the term of the Plan, or (v) otherwise constitute a material change requiring stockholder approval under applicable laws, policies or regulations or the applicable listing or other requirements of an Exchange, then such amendment shall be subject to stockholder approval; and provided, further, that the Board or Committee may condition any other amendment or modification on the approval of stockholders of the Company for any reason, including by reason of such approval being necessary or deemed advisable to (i) to comply with the listing or other requirements of an Exchange, or (ii) to satisfy any other tax, securities or other applicable laws, policies or regulations.

16.2. **AWARDS PREVIOUSLY GRANTED.** At any time and from time to time, the Committee may amend, modify or terminate any outstanding Award without approval of the Participant; provided, however:

- (a) Subject to the terms of the applicable Award Certificate, such amendment, modification or termination shall not, without the Participant's consent, reduce or diminish the value of such Award

determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment or termination (with the per-share value of an Option or Stock Appreciation Right for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment or termination over the exercise or base price of such Award);

(b) The original term of an Option may not be extended without the prior approval of the stockholders of the Company;

(c) Except as otherwise provided in Article 15, the exercise price of an Option may not be reduced, directly or indirectly, without the prior approval of the stockholders of the Company; and

(d) No termination, amendment, or modification of the Plan shall adversely affect any Award previously granted under the Plan, without the written consent of the Participant affected thereby. An outstanding Award shall not be deemed to be "adversely affected" by a Plan amendment if such amendment would not reduce or diminish the value of such Award determined as if the Award had been exercised, vested, cashed in or otherwise settled on the date of such amendment (with the per-share value of an Option or Stock Appreciation Right for this purpose being calculated as the excess, if any, of the Fair Market Value as of the date of such amendment over the exercise or base price of such Award).

16.3. **COMPLIANCE AMENDMENTS.** Notwithstanding anything in the Plan or in any Award Certificate to the contrary, the Committee may amend the Plan or an Award Certificate, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan or Award Certificate to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder. By accepting an Award under this Plan, a Participant agrees to any amendment made pursuant to this Section 16.3 to any Award granted under the Plan without further consideration or action.

ARTICLE 17 GENERAL PROVISIONS

17.1. **NO RIGHTS TO AWARDS; NON-UNIFORM DETERMINATIONS.** No Participant or any Eligible Participant shall have any claim to be granted any Award under the Plan. Neither the Company, its Affiliates nor the Committee is obligated to treat Participants or Eligible Participants uniformly, and determinations made under the Plan may be made by the Committee selectively among Eligible Participants who receive, or are eligible to receive, Awards (whether or not such Eligible Participants are similarly situated).

17.2. **NO STOCKHOLDER RIGHTS.** No Award gives a Participant any of the rights of a stockholder of the Company unless and until Shares are in fact issued to such person in connection with such Award.

17.3. **SPECIAL PROVISIONS RELATED TO SECTION 409A OF THE CODE.**

(a) Notwithstanding anything in the Plan or in any Award Certificate to the contrary, to the extent that any amount or benefit that would constitute non-exempt "deferred compensation" for purposes of Section 409A of the Code would otherwise be payable or distributable under the Plan or any Award Certificate by reason of the occurrence of a Change in Control, or the Participant's Disability or separation from service, such amount or benefit will not be payable or distributable to the Participant by reason of such circumstance unless (i) the circumstances giving rise to such Change in Control, Disability or separation from service meet any description or definition of "change in control event", "disability" or "separation from service", as the case may be, in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. This provision does not prohibit the vesting of any Award upon a Change in Control, Disability or separation from service, however defined. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the next earliest payment or distribution date or event specified in the Award Certificate that is permissible under Section 409A.

(b) If any one or more Awards granted under the Plan to a Participant could qualify for any separation pay exemption described in Treas. Reg. Section 1.409A-1(b)(9), but such Awards in the aggregate exceed the dollar limit permitted for the separation pay exemptions, the Company (acting through the Committee or the Company's President) shall determine which Awards or portions thereof will be subject to such exemptions.

(c) Notwithstanding anything in the Plan or in any Award Certificate to the contrary, if any amount or benefit that would constitute non-exempt "deferred compensation" for purposes of Section 409A of the Code would otherwise be payable or distributable under this Plan or any Award Certificate by reason of a Participant's separation from service during a period in which the Participant is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Committee under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes):

(i) if the payment or distribution is payable in a lump sum, the Participant's right to receive payment or distribution of such non-exempt deferred compensation will be delayed until the earlier of the Participant's death or the first day of the seventh month following the Participant's separation from service; and

(ii) if the payment or distribution is payable over time, the amount of such non-exempt deferred compensation that would otherwise be payable during the six-month period immediately following the Participant's separation from service will be accumulated and the Participant's right to receive payment or distribution of such accumulated amount will be delayed until the earlier of the Participant's death or the first day of the seventh month following the Participant's separation from service, whereupon the accumulated amount will be paid or distributed to the Participant and the normal payment or distribution schedule for any remaining payments or distributions will resume.

For purposes of this Plan, the term "Specified Employee" has the meaning given such term in Code Section 409A and the final regulations thereunder, *provided, however*, that, as permitted in such final regulations, the Company's Specified Employees and its application of the six-month delay rule of Code Section 409A(a)(2)(B)(i) shall be determined in accordance with rules adopted by the Board or any committee of the Board, which shall be applied consistently with respect to all nonqualified deferred compensation arrangements of the Company, including this Plan.

17.4. **WITHHOLDING.** The Company or any Affiliate shall have the authority and the right to deduct or withhold, or require a Participant to remit to the Company, an amount sufficient to satisfy federal, state, and local taxes (including the Participant's FICA obligation) required by law to be withheld with respect to any exercise, lapse of restriction or other taxable event arising as a result of the Plan. With respect to withholding required upon any taxable event under the Plan, the Committee may, at the time the Award is granted or thereafter, require or permit that any such withholding requirement be satisfied, in whole or in part, by withholding from the Award Shares having a Fair Market Value on the date of withholding equal to the minimum amount (and not any greater amount) required to be withheld for tax purposes, all in accordance with such procedures as the Committee establishes. All such elections shall be subject to any restrictions or limitations that the Committee, in its sole discretion, deems appropriate.

17.5. **NO RIGHT TO CONTINUED SERVICE.** Nothing in the Plan, any Award Certificate or any other document or statement made with respect to the Plan, shall interfere with or limit in any way the right of the Company or any Affiliate to terminate any Participant's employment or status as an officer, director or consultant at any time, nor confer upon any Participant any right to continue as an employee, officer, director or consultant of the Company or any Affiliate, whether for the duration of a Participant's Award or otherwise. Neither an Award nor any benefits arising under this Plan shall constitute an employment contract with the Company or any Affiliate and, accordingly, subject to Article 16, this Plan and the benefits hereunder may be terminated at any time in the sole and exclusive discretion of the Board of Directors without giving rise to any liability on the part of the Company or any of its Affiliates.

- 17.6. *UNFUNDED STATUS OF AWARDS.* The Plan is intended to be an "unfunded" plan for incentive and deferred compensation. With respect to any payments not yet made to a Participant pursuant to an Award, nothing contained in the Plan or any Award Certificate shall give the Participant any rights that are greater than those of a general creditor of the Company or any Affiliate. This Plan is not intended to be subject to ERISA.
- 17.7. *RELATIONSHIP TO OTHER BENEFITS.* No payment under the Plan shall be taken into account in determining any benefits under any pension, retirement, savings, profit sharing, group insurance, welfare or benefit plan of the Company or any Affiliate unless provided otherwise in such other plan.
- 17.8. *EXPENSES.* The expenses of administering the Plan shall be borne by the Company and its Affiliates.
- 17.9. *TITLES AND HEADINGS.* The titles and headings of the Sections in the Plan are for convenience of reference only, and in the event of any conflict, the text of the Plan, rather than such titles or headings, shall control.
- 17.10. *GENDER AND NUMBER.* Except where otherwise indicated by the context, any masculine term used herein also shall include the feminine; the plural shall include the singular and the singular shall include the plural.
- 17.11. *FRACTIONAL SHARES.* No fractional Shares shall be issued and the Committee shall determine, in its discretion, whether cash shall be given in lieu of fractional Shares or whether such fractional Shares shall be eliminated by rounding up or down.
- 17.12. *GOVERNMENT AND OTHER REGULATIONS.*
- (a) Notwithstanding any other provision of the Plan, no Participant who acquires Shares pursuant to the Plan may, during any period of time that such Participant is an affiliate of the Company (within the meaning of the rules and regulations of the Securities and Exchange Commission under the 1933 Act), sell such Shares, unless such offer and sale is made (i) pursuant to an effective registration statement under the 1933 Act, which is current and includes the Shares to be sold, or (ii) pursuant to an appropriate exemption from the registration requirement of the 1933 Act, such as that set forth in Rule 144 promulgated under the 1933 Act.
- (b) Notwithstanding any other provision of the Plan, if at any time the Committee shall determine that the registration, listing or qualification of the Shares covered by an Award upon any Exchange or under any foreign, federal, state or local law or practice, or the consent or approval of any governmental regulatory body, is necessary or desirable as a condition of, or in connection with, the granting of such Award or the purchase or receipt of Shares thereunder, no Shares may be purchased, delivered or received pursuant to such Award unless and until such registration, listing, qualification, consent or approval shall have been effected or obtained free of any condition not acceptable to the Committee. Any Participant receiving or purchasing Shares pursuant to an Award shall make such representations and agreements and furnish such information as the Committee may request to assure compliance with the foregoing or any other applicable legal requirements. The Company shall not be required to issue or deliver any certificate or certificates for Shares under the Plan prior to the Committee's determination that all related requirements have been fulfilled. The Company shall in no event be obligated to register any securities pursuant to the 1933 Act or applicable state or foreign law or to take any other action in order to cause the issuance and delivery of such certificates to comply with any such law, regulation or requirement.
- 17.13. *GOVERNING LAW.* To the extent not governed by federal law, the Plan and all Award Certificates shall be construed in accordance with and governed by the laws of the State of Delaware.
- 17.14. *ADDITIONAL PROVISIONS.* Each Award Certificate may contain such other terms and conditions as the Committee may determine; provided that such other terms and conditions are not inconsistent with the provisions of the Plan.

17.15. *NO LIMITATIONS ON RIGHTS OF COMPANY.* The grant of any Award shall not in any way affect the right or power of the Company to make adjustments, reclassification or changes in its capital or business structure or to merge, consolidate, dissolve, liquidate, sell or transfer all or any part of its business or assets. The Plan shall not restrict the authority of the Company, for proper corporate purposes, to draft or assume awards, other than under the Plan, to or with respect to any person. If the Committee so directs, the Company may issue or transfer Shares to an Affiliate, for such lawful consideration as the Committee may specify, upon the condition or understanding that the Affiliate will transfer such Shares to a Participant in accordance with the terms of an Award granted to such Participant and specified by the Committee pursuant to the provisions of the Plan.

17.16. *INDEMNIFICATION.* Each person who is or shall have been a member of the Committee, or of the Board, or an officer of the Company to whom authority was delegated in accordance with Article 4 shall be indemnified and held harmless by the Company against and from any loss, cost, liability, or expense that may be imposed upon or reasonably incurred by him or her in connection with or resulting from any claim, action, suit, or proceeding to which he or she may be a party or in which he or she may be involved by reason of any action taken or failure to act under the Plan and against and from any and all amounts paid by him or her in settlement thereof, with the Company's approval, or paid by him or her in satisfaction of any judgment in any such action, suit, or proceeding against him or her, provided he or she shall give the Company an opportunity, at its own expense, to handle and defend the same before he or she undertakes to handle and defend it on his or her own behalf, unless such loss, cost, liability, or expense is a result of his or her own willful misconduct or except as expressly provided by statute. The foregoing right of indemnification shall not be exclusive of any other rights of indemnification to which such persons may be entitled under the Company's Certificate of Incorporation or Bylaws, as a matter of law, or otherwise, or any power that the Company may have to indemnify them or hold them harmless.

LEXAR MEDIA, INC.
1996 STOCK OPTION/STOCK ISSUANCE PLAN
(As Adopted December 18, 1996 and Amended May 9, 1997, October 30, 1998,
September 15, 1999 and December 8, 1999)

ARTICLE ONE

GENERAL PROVISIONS

I. PURPOSE OF THE PLAN

This 1996 Stock Option/Stock Issuance Plan is intended to promote the interests of Lexar Media, Inc., a California corporation, by providing eligible persons with the opportunity to acquire a proprietary interest, or otherwise increase their proprietary interest, in the Corporation as an incentive for them to remain in the service of the Corporation.

Capitalized terms herein shall have the meanings assigned to such terms in the attached Appendix.

II. STRUCTURE OF THE PLAN

A. The Plan shall be divided into two (2) separate equity programs:

(i) the Option Grant Program under which eligible persons may, at the discretion of the Plan Administrator, be granted options to purchase shares of Common Stock, and

(ii) the Stock Issuance Program under which eligible persons may at the discretion of the Plan Administrator, be issued shares of Common Stock directly, either through the immediate purchase of such shares or as a bonus for services rendered the Corporation (or any Parent or Subsidiary).

B. The provisions of Articles One and Four shall apply to both equity programs under the Plan and shall accordingly govern the interests of all persons under the Plan.

III. ADMINISTRATION OF THE PLAN

A. The Plan shall be administered by the Board. However, any or all administrative functions otherwise exercisable by the Board may be delegated to the Committee. Members of the Committee shall serve for such period of time as the Board may determine and shall be subject to removal by the Board at any time. The Board may also at any time terminate the functions of the Committee and reassume all powers and authority previously delegated to the Committee.

B. The Plan Administrator shall have full power and authority (subject to the provisions of the Plan) to establish such rules and regulations as it may deem appropriate for proper administration of the Plan and to make such determinations under, and issue such interpretations of, the Plan and any outstanding options or stock issuances thereunder as it may deem necessary or advisable. Decisions of the Plan Administrator shall be final and binding on all parties who have an interest in the Plan or any option or stock issuance thereunder.

IV. ELIGIBILITY

A. The persons eligible to participate in the Plan are as follows:

(i) Employees,

(ii) non-employee members of the Board or the non-employee members of the board of directors of any Parent or Subsidiary, and

(iii) consultants and other independent advisors who provide services to the Corporation (or any Parent or Subsidiary).

B. The Plan Administrator shall have full authority to determine, (i) with respect to the option grants under the Option Grant Program, which eligible persons are to receive option grants the time or times when such option grants are to be made, the number of shares to be covered by each such grant, the status of the granted options as either an Incentive Option or a Non-Statutory Option, the time or times at which each option is to become exercisable, the vesting schedule (if any) applicable to the option shares and the maximum term for which the option is to remain outstanding, and (ii) with respect to stock issuances under the Stock Issuance Program, which eligible persons are to receive stock issuances, the time or times when such issuances are to be made, the number of shares to be issued to each Participant, the vesting schedule (if any) applicable to the issued shares and the consideration to be paid by the Participant for such shares.

C. The Plan Administrator shall have the absolute discretion either to grant options in accordance with the Option Grant Program or to effect stock issuances in accordance with the Stock Issuance Program.

V. STOCK SUBJECT TO THE PLAN

A. The stock issuable under the Plan shall be shares of authorized but unissued or reacquired Common Stock. The maximum number of shares of Common Stock which may be issued over the term of the Plan shall not exceed Thirteen Million Thirty-Eight Thousand Eighty-Two (13,038,082) shares.

B. Shares of Common Stock subject to outstanding options shall be available for subsequent issuance under the Plan to the extent (i) the options expire or terminate for any reasons prior to exercise in full or (ii) the options are cancelled in accordance with the cancellation-regrant provisions of Article Two. Unvested shares issued under the Plan and subsequently repurchased by the Corporation, at the option exercise price paid per share, pursuant to the Corporation's repurchase rights under the Plan shall be added back to the number of shares of Common Stock reserved for issuance under the Plan and shall accordingly be available for reissuance through one or more subsequent option grants or direct stock issuances under the Plan.

C. Should any change be made to the Common Stock by reason of any stock split, stock dividend, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration, appropriate adjustments shall be made to (i) the maximum number and/or class securities issuable under the Plan and (ii) the number and/or class of securities and the exercise price per share in effect under each outstanding option in order to prevent the dilution or enlargement of benefits thereunder. The adjustments determined by the Plan Administrator shall be final, binding and conclusive. In no event shall any such adjustments be made in connection with the conversion of one of more outstanding shares of the Corporation's preferred stock into shares of Common Stock.

OPTION GRANT PROGRAM

I. OPTION TERMS

Each option shall be evidenced by one or more documents in the form approved by the Plan Administrator; provided, however, that each such document shall comply with the terms specified below. Each document evidencing an Incentive Option shall, in addition, be subject to the provisions of the Plan applicable to such options.

A. Exercise Price.

1. The exercise price per share shall be fixed by the Plan Administrator in accordance with the following provisions:

(i) The exercise price per share shall not be less than one hundred percent (100%) of the Fair Market Value per share of Common Stock on the option grant date.

(ii) If the person to whom the option is granted is a 10% Shareholder, then the exercise price per share shall not be less than one hundred ten percent (110%) of the Fair Market Value per share of Common Stock on the option grant date.

2. The exercise price shall become immediately due upon exercise of the option and shall, subject to the provisions of Section I of Article Four and the documents evidencing the option, be payable in cash or check made payable to the Corporation. Should the Common Stock be registered under Section 12(g) of the 1934 Act at the time the option is exercised, then the exercise price may also be paid as follows:

(i) in shares of Common Stock held for the requisite period necessary to avoid a charge to the Corporation's earnings for financial reporting purposes and valued at Fair Market Value on the Exercise Date, or

(ii) to the extent the option is exercised for vested shares, through all special sale and remittance procedure pursuant to which the Optionee shall concurrently provide irrevocable written instructions (A) to the Corporation-designated brokerage firm to effect the immediate sale of the purchased shares and remit to the Corporation, out of the sale proceeds available on the settlement date, sufficient funds to cover the aggregate exercise price payable for the purchased shares plus all applicable Federal, state and local income and employment taxes required to be withheld by the Corporation by reason of such exercise and (B) to the Corporation to deliver the certificates for the purchased shares directly to such brokerage firm in order to complete the sale.

Except to the extent such sale and remittance procedure is utilized, payment of the exercise price for the purchased shares must be made on the Exercise Date.

B. Exercise and Term of Options. Each option shall be exercisable at such time or times, during such period and for such number of shares as shall be determined by the Plan Administrator and set forth in the documents evidencing the option grant. However, no option shall have a term in excess of ten (10) years measured from the option grant due.

C. Effect of Termination of Services.

1. The following provisions shall govern the exercise of any options held by the Optionee at the time of cessation of Service or death:

(i) Should the Optionee cease to remain in Service for any reason other than Disability or death, then the Optionee shall have a period of three (3) months following the date of such cessation of Service during which to exercise each outstanding option held by such Optionee.

(ii) Should Optionee's Service terminate by reason of Disability, then the Optionee shall have a period of twelve (12) months following the date of such cessation of Service during which to exercise each outstanding option held by such Optionee.

(iii) If the Optionee dies while holding an outstanding option, then the personal representative of his or her estate or the person or persons to whom the option is transferred pursuant to the Optionee's will or the laws of inheritance shall have a twelve (12)-month period following the date of the Optionee's death to exercise such option.

(iv) Under no circumstances, however, shall any such option be exercisable after the specified expiration of the option term.

(v) During the application post-Service exercise period, the option may not be exercised in the aggregate for more than the number of vested shares for which the option is exercisable on the date of the Optionee's cessation of Service. Upon the expiration of the applicable exercise period or (if earlier) upon the expiration of the option term, the option shall terminate and cease to be outstanding for any vested shares for which the option has not been exercised. However, the option shall, immediately upon the Optionee's cessation of Service, terminate and cease to be outstanding with respect to any and all option shares for which the option is not otherwise at the time exercisable or in which the Optionee is not otherwise at the time vested.

2. The Plan Administrator shall have the discretion, exercisable either at the time an option is granted or at any time while the option remains outstanding, to:

(i) extend the period of time for which the option is to remain exercisable following Optionee's cessation of Service or death from the limited period otherwise in effect for that option to such greater period of time as the Plan Administrator shall deem appropriate, but in no event beyond the expiration of the option term, and/or

(ii) permit the option to be exercised, during the applicable post-Service exercise period, not only with respect to the number of vested shares of Common Stock for which such option is exercisable at the time of the Optionee's cessation of Service but also with respect to one or more additional installments in which the Optionee would have vested under the option had the Optionee continued in Service.

D. Shareholder Rights. The holder of an option shall have no shareholder rights with respect to the shares subject to the option until such person shall have exercised the option, paid the exercise price and become a holder of record of the purchased shares.

E. Unvested Shares. The Plan Administrator shall have the discretion to grant options which are exercisable for unvested shares of Common Stock. Should the Optionee cease Service while holding such unvested shares, the Corporation shall have the right to repurchase, at the exercise price paid per share, all or (at the discretion of the Corporation and with the consent of the Optionee) any of those unvested shares. The terms upon which such repurchase right shall be exercisable (including the period and procedure for exercise and the appropriate vesting schedule for the purchased shares) shall be established by the Plan Administrator and set forth in the document evidencing such repurchase right. The Plan Administrator may not impose a vesting schedule upon any option grant or any shares of Common Stock subject to the option which is more restrictive than twenty percent (20%) per year vesting, with the initial vesting to occur not later than one (1) year after the option grant date. However, this minimum vesting requirement shall not be applicable with respect to any options granted to an officer or Board member.

F. First Refusal Rights. Until such time as the Common Stock is first registered under Section 12(g) of the 1934 Act, the Corporation shall have the right of first refusal with respect to any proposed disposition by the Optionee (or any successor in interest) of any shares of Common Stock issued under the Plan. Such right of first refusal shall be exercisable in accordance with the terms established by the Plan Administrator and set forth in the document evidencing such right.

G. Limited Transferability by Options. During the lifetime of the Optionee, the option shall be exercisable only by the Optionee and shall not be assignable or transferable other than by will or by the laws of descent and distribution following the Optionee's death.

H. Withholding. The Corporation's obligation to deliver shares of Common Stock upon the exercise of any options granted under the Plan shall be subject to the satisfaction of all applicable Federal, state and local income and employment tax withholding requirements.

II. INCENTIVE OPTIONS

The terms specified below shall be applicable to all Incentive Options. Except as modified by the provisions of this Section II, all the provisions of the Plan shall be applicable to Incentive Options. Options which are specifically designated as Non-Statutory Options shall not be subject to the terms of this Section II.

- I. Eligibility. Incentive Options may only be granted to Employees.
- J. Exercise Price. The exercise price per share shall not be less than one hundred percent (100%) of the Fair Market Value per share of Common Stock on the option grant date.
- K. Dollar Limitation. The aggregate Fair Market Value of the shares of Common Stock (determined as of the respective date or dates of grant) for which one or more options granted to any Employee under the Plan (or any other option plan of the Corporation or any Parent or Subsidiary) may for the first time become exercisable as Incentive Options during any one (1) calendar year shall not exceed the sum of One Hundred Thousand Dollars (\$100,000). To the extent the Employee holds two (2) or more such options which become exercisable for the first time in the same calendar year, the foregoing limitation on the exercisability of such options as Incentive Options shall be applied on the basis of the order in which such options are granted.
- D. 10% Shareholder. If any Employee to whom an Incentive Option is granted is a 10% Shareholder, then the option term shall not exceed five (5) years measured from the option grant date.

III. CORPORATE TRANSACTION

- A. The shares subject to each option outstanding under the Plan at the time of a Corporate Transaction shall automatically vest in full so that each such option shall, immediately prior to the effective date of the Corporate Transaction, become fully exercisable for all of the shares of Common Stock at the time subject to that option and may be exercised for any or all of those shares as fully-vested shares of Common Stock. However, the shares subject to an outstanding option shall not vest on such an accelerated basis if and to the extent: (i) such option is assumed by the successor corporation (or parent thereof) in the Corporate Transaction and the Corporation's repurchase rights with respect to the unvested option shares are concurrently assigned to such successor corporation (or parent thereof) or (ii) such option is to be replaced with a cash incentive program of the successor corporation which preserves the spread existing on the unvested option shares at the time of the Corporate Transaction and provides for subsequent payout in accordance with the same vesting schedule applicable to those unvested option shares or (iii) the acceleration of such option is subject to other limitations imposed by the Plan Administrator at the time of the option grant.
- B. All outstanding repurchase rights shall also terminate automatically, and the shares of Common Stock subject to those terminated rights shall immediately vest in full, in the event of any Corporate Transaction, except to the extent: (i) those repurchase rights are assigned to the successor corporation (or parent thereof) in connection with such Corporate Transaction or (ii) such accelerated vesting is precluded by other limitations imposed by the Plan Administrator at the time the repurchase right is issued.
- C. Immediately following the consummation of the Corporate Transaction, all outstanding options shall terminate and cease to be outstanding, except to the extent assumed by the successor corporation (or parent thereof).
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D. Each option which is assumed in connection with a Corporate Transaction shall be appropriately adjusted, immediately after such Corporate Transaction, to apply to the number and class of securities which would have been issuable to the Optionee in consummation of such Corporate Transaction, had the option been exercised immediately prior to such Corporate Transaction. Appropriate adjustments shall also be made to (i) the number and class of securities available for issuance under the Plan following the consummation of such Corporate Transaction and (ii) the exercise price payable per share under each outstanding option, provided the aggregate exercise price payable for such securities shall remain the same.

E. The Plan Administrator shall have the discretion, exercisable either at the time the option is granted or at any time while the option remains outstanding, to provide for the automatic acceleration (in whole or in part) of one or more outstanding options (and the automatic termination of one or more outstanding repurchase rights, with the immediate vesting of the shares of Common Stock subject to those terminated rights) upon the occurrence of a Corporate Transaction, whether or not those options are to be assumed or replaced (or those repurchase rights are to be assigned) in the Corporate Transaction.

F. The Plan Administrator shall also have full power and authority, exercisable either at the time the option is granted or at any time while the option remains outstanding, to structure such option so that the shares subject to that option will automatically vest on an accelerated basis should the Optionee's Service terminate by reason of an Involuntary Termination within a designated period (not to exceed eighteen (18) months) following the effective date of any Corporate Transaction in which the option is assumed and the repurchase rights applicable to those shares do not otherwise terminate. Any such option shall remain exercisable for the fully-vested option shares until the earlier of (i) the expiration of the option term or (ii) the expiration of the one (1)-year period measured from the effective date of the Involuntary Termination. In addition, the Plan Administrator may provide that one or more of the outstanding repurchase rights with respect to shares held by the Optionee at the time of such Involuntary Termination shall immediately terminate on an accelerated basis, and the shares subject to those terminated rights shall accordingly vest.

G. The portion of any Incentive Option accelerated in connection with a Corporate Transaction shall remain exercisable as an Incentive Option only to the extent the applicable One Hundred Thousand Dollar limitation is not exceeded. To the extent such dollar limitation is exceeded, the accelerated portion of such option shall be exercisable as a Non-Statutory Option under the Federal tax laws.

H. The grant of options under the Plan shall in no way affect the right of the Corporation to adjust, reclassify, reorganize or otherwise change its capital or business structure or to merge, consolidate, dissolve, liquidate or sell or transfer all or any part of its business or assets.

IV. CANCELLATION AND REGRANT OF OPTIONS

The Plan Administrator shall have the authority to effect, at any time and from time to time, with the consent of the affected option holders, the cancellation of any or all outstanding options under the Plan and to grant in substitution therefor new options covering the same or different number of shares of Common Stock but with an exercise price per share based on the Fair Market Value per share of Common Stock on the new option grant date.

ARTICLE THREE

STOCK ISSUANCE PROGRAM

I. STOCK ISSUANCE TERMS

Shares of Common Stock maybe issued under the Stock Issuance Program through direct and immediate issuances without any intervening option grants. Each such stock issuance shall be evidenced by a Stock Issuance Agreement which complies with the terms specified below.

A. Purchase Price.

1. The purchase price per share shall be fixed by the Plan Administrator but shall not be less than one hundred percent (100%) of the Fair Market Value per share of Common Stock on the issue date. However, the purchase price per share of Common Stock issued to a 10% Shareholder shall not be less than one hundred and ten percent (110%) of such Fair Market Value.

2. Subject to the provisions of Section I of Article Four, shares of Common Stock may be issued under the Stock Issuance Program for any of the following items of consideration which the Plan Administrator may deem appropriate in each individual instance:

(i) cash or check made payable to the Corporation, or

(ii) past services rendered to the Corporation (or any Parent or Subsidiary).

B. Vesting Provisions.

1. Shares of Common Stock issued under the Stock Issuance Program may, in the discretion of the Plan Administrator, be fully and immediately vested upon issuance or may vest in one or more installments over the Participant's period of Service or upon attainment of specified performance objectives. However, the Plan Administrator may not impose a vesting schedule upon any stock issuance effected under the Stock Issuance Program which is more restrictive than twenty percent (20%) per year vesting, with initial vesting to occur not later than one (1) year after the issuance date. However, this minimum vesting requirement shall not be applicable with respect to any stock issued to an officer or Board member.

2. Any new, substituted or additional securities or other property (including money paid other than as a regular cash dividend) which the Participant may have the right to receive with respect the Participant's unvested shares of Common Stock by reason of any stock dividend, stock split, recapitalization, combination of shares, exchange of shares or other change affecting the outstanding Common Stock as a class without the Corporation's receipt of consideration shall be issued subject to (i) the same vesting requirements applicable to the Participant's unvested shares of Common Stock and (ii) such escrow arrangements as the Plan Administrator shall deem appropriate.

3. The Participant shall have full shareholder rights with respect to any shares of Common Stock issued to the Participant under the Stock Issuance Program, whether or not the Participant's interest in those shares is vested. Accordingly, the Participant shall have the right to vote such shares and to receive any regular cash dividends paid on such shares.
4. Should the Participant cease to remain in Service while holding one or more unvested shares of Common Stock issued under the Stock Issuance Program or should the performance objectives not be attained with respect to one or more such unvested shares of Common Stock, then those shares shall be immediately surrendered to the Corporation for cancellation, and the Participant shall have no further shareholder rights with respect to those shares. To the extent the surrendered shares were previously issued to the Participant for consideration paid in cash or cash equivalent (including the Participant's purchase-money indebtedness), the Corporation shall repay to the Participant the cash consideration paid for the surrendered shares and shall cancel the unpaid principal balance of any outstanding purchase-money note of the Participant attributable to such surrendered shares.
5. The Plan Administrator may in its discretion waive the surrender and cancellation of one or more unvested shares of Common Stock (or other assets attributable thereto) which would otherwise occur upon the non- completion of the vesting schedule applicable to such shares. Such waiver shall result in the immediate vesting of the Participant's interest in the shares of Common Stock as to which the waiver applies. Such waiver may be effected at any time, whether before or after the Participant's cessation of Service or the attainment or non-attainment of the applicable performance objectives.

C. First Refusal Rights. Until such time as the Common Stock is first registered under Section 12(g) of the 1934 Act, the Corporation shall have the right of first refusal with respect to any proposed disposition by the Participant (or any successor in interest) of any shares of Common Stock issued under the Stock Issuance Program. Such right of first refusal shall be exercisable in accordance with the terms established by the Plan Administrator and set forth in the document evidencing such right.

II. CORPORATE TRANSACTION

- A. Upon the occurrence of a Corporate Transaction, all outstanding repurchase rights under the Stock Issuance Program shall terminate automatically, and the shares of Common Stock subject to those terminated rights shall immediately vest in full, except to the extent: (i) those repurchase rights are assigned to the successor corporation (or parent thereof) in connection with such Corporate Transaction or (ii) such accelerated vesting is precluded by other limitations imposed by the Plan Administrator at the time the repurchase right is issued.
- B. The Plan Administrator shall have the discretionary authority, exercisable either at the time the unvested shares are issued or any time while the Corporation's repurchase rights with respect to those shares remain outstanding, to provide that those rights shall automatically terminate on an accelerated basis, and the shares of Common Stock subject to those terminated rights shall immediately vest, in the event the Participant's Service should subsequently terminate by reason of an Involuntary Termination within a designated period (not to exceed eighteen (18) months) following the effective date of any Corporate Transaction in which those repurchase rights are assigned to the successor corporation (or parent thereof).
-

III. SHARE ESCROW/LEGENDS

Unvested shares may, in the Plan Administrator's discretion, be held in escrow by the Corporation until the Participant's interest in such shares vests or may be issued directly to the Participant with restrictive legends on the certificates evidencing those unvested shares.

ARTICLE FOUR

MISCELLANEOUS

I. FINANCING

The Plan Administrator may permit any Optionee or Participant to pay the option exercise price or the purchase price for shares issued to such person under the Plan by delivering a full-recourse, interest-bearing promissory note payable in one or more installments and secured by the purchased shares. However, any promissory note delivered by a consultant must be secured by property in addition to the purchased shares of Common Stock. In no event shall the maximum credit available to the Optionee or Participant exceed the sum of (i) the aggregate option exercise price or purchase price payable for the purchased shares plus (ii) any Federal, state and local income and employment tax liability incurred by the Optionee or the Participant in connection with the option exercise or share purchase.

II. EFFECTIVE DATA AND TERM OF PLAN

A. The Plan shall become effective when adopted by the Board, but not option granted under the Plan may be exercised, and no shares shall be issued under the Plan, until the Plan is approved by the Corporation's shareholders. If such shareholder approval is not obtained within twelve (12) months after the date of the Board's adoption of the Plan, then all options previously granted under the Plan shall terminate and cease to be outstanding, and no further options shall be granted and no shares shall be issued under the Plan. Subject to such limitation, the Plan Administrator may grant options and issue shares under the Plan at any time after the effective date of the Plan and before the date fixed herein for termination of the Plan.

B. The Plan shall terminate upon the earliest of (i) the expiration of the ten (10)-year period measured from the date the Plan is adopted by the Board, (ii) the date on which all shares available for issuance under the Plan shall have been issued or (iii) the termination of all outstanding options in connection with a Corporate Transaction. All options and unvested stock issuances outstanding at the time under the Plan shall continue to have full force and effect in accordance with the provisions of the documents evidencing such options or issuances.

III. AMENDMENT OF THE PLAN

A. The Board shall have complete and exclusive power and authority to amend or modify the Plan in any or all respects. However, no such amendment or modification shall adversely affect the rights and obligations with respect to options or unvested stock issuances at the time outstanding under the Plan unless the Optionee or the Participant consents to such amendment or modification. In addition, certain amendments may require shareholder approval pursuant to applicable laws and regulations.

B. Options may be granted under the Option Grant Program and shares may be issued under the Stock Issuance Program which are in each instance in excess of the number of shares of Common Stock then available for issuance under the Plan, provided any excess shares actually issued under those programs shall be held in escrow until there is obtained shareholder approval of an amendment sufficiently increasing the number of shares of Common Stock available for issuance under the Plan. If such shareholder approval is not obtained within twelve (12) months after the date first such excess issuances are made, then (i) any unexercised options granted on the basis of such excess shares shall terminate and cease to be outstanding and (ii) the Corporation shall promptly refund to the Optionees and the Participants the exercise or purchase price paid for any excess share issued under the Plan and held in escrow, together with interest (at the applicable Short Term Federal Rate) for the period the shares were held in escrow, and such shares shall thereupon be automatically cancelled and cease to be outstanding.

C. Compliance Amendments. Notwithstanding anything in the Plan or in any notice of grant, option agreement or other applicable agreement to the contrary, the Committee may amend the Plan or any notice of grant, option agreement or other applicable agreement, to take effect retroactively or otherwise, as deemed necessary or advisable for the purpose of conforming the Plan, notice of grant, option agreement or other applicable agreement to any present or future law relating to plans of this or similar nature (including, but not limited to, Section 409A of the Code), and to the administrative regulations and rulings promulgated thereunder. By accepting an option under this Plan, a Optionee agrees to any amendment made pursuant to this Section to any Option granted under the Plan without further consideration or action.

IV. USE OF PROCEEDS

Any cash proceeds received by the Corporation from the sale of shares of Common Stock under the Plan shall be used for general corporate purposes.

V. WITHHOLDING

The Corporation's obligation to deliver shares of Common Stock upon the exercise of any options or upon the issuance or vesting of any shares issued under the Plan shall be subject to the satisfaction of all applicable Federal, state and local income and employment tax withholding requirements.

VI. REGULATORY APPROVALS

The implementation of the Plan, the granting of any options under the Plan and the issuance of any shares of Common Stock (i) upon the exercise of any option or (ii) under the Stock Issuance Program shall be subject to the Corporation's procurement of all approvals and permits required by regulatory authorities having jurisdiction over the Plan, the options granted under it and the shares of Common Stock issued pursuant to it.

VII. NO EMPLOYMENT OR SERVICE RIGHTS

Nothing in the Plan shall confer upon the Optionee or the Participant any right to continue in Service for any period of specific duration or interfere with or otherwise restrict in any way the rights of the Corporation (or any Parent or Subsidiary employing or retaining such person) or of the Optionee or the Participant, which rights are hereby expressly reserved by each, to terminate such person's Service at any time for any reason, with or without cause.

VIII. FINANCIAL REPORTS

The Corporation shall deliver a balance sheet and an income statement at least annually to each individual holding an outstanding option under the Plan, unless such individual is a key Employee whose duties in connection with the Corporation (or any Parent or Subsidiary) assure such individual access to equivalent information.

IX. 409A COMPLIANCE

A. Notwithstanding anything herein to the contrary, any discretionary authority available pursuant to this Plan shall only be exercised in a manner believed in good faith to comply with Section 409A of the Code and to maintain the exemption from Section 409A for the options and stock issued hereunder.

B. Notwithstanding anything herein to the contrary, nothing herein shall provide for any feature for the deferral of compensation other than the deferral of recognition of income until the exercise or disposition of an option.

C. Special Provisions Related To Section 409A of the Code.

1. Notwithstanding anything in the Plan or in any Notice of Grant, Option Agreement or other applicable agreement to the contrary, to the extent that any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under the Plan or any notice of grant, option agreement or other applicable agreement by reason of the occurrence of a Change in Control, or the Optionee’s Disability or separation from service, such amount or benefit will not be payable or distributable to the Optionee by reason of such circumstance unless (i) the circumstances giving rise to such Change in Control, Disability or separation from service meet any description or definition of “change in control event”, “disability” or “separation from service”, as the case may be, in Section 409A of the Code and applicable regulations (without giving effect to any elective provisions that may be available under such definition), or (ii) the payment or distribution of such amount or benefit would be exempt from the application of Section 409A of the Code by reason of the short-term deferral exemption or otherwise. This provision does not prohibit the vesting of any option upon a Change in Control, Disability or separation from service, however defined. If this provision prevents the payment or distribution of any amount or benefit, such payment or distribution shall be made on the next earliest payment or distribution date or event specified in the notice of grant, option agreement or other applicable agreement that is permissible under Section 409A.

2. If any one or more options granted under the Plan to a Optionee could qualify for any separation pay exemption described in Treas. Reg. Section 1.409A-1(b)(9), but such options in the aggregate exceed the dollar limit permitted for the separation pay exemptions, the Corporation (acting through the Committee or the Head of Human Resources) shall determine which options or portions thereof will be subject to such exemptions.

3. Notwithstanding anything in the Plan or in any notice of grant, option agreement or other applicable agreement to the contrary, if any amount or benefit that would constitute non-exempt “deferred compensation” for purposes of Section 409A of the Code would otherwise be payable or distributable under this Plan or in any notice of grant, option agreement or other applicable agreement by reason of a Optionee’s separation from service during a period in which the Optionee is a Specified Employee (as defined below), then, subject to any permissible acceleration of payment by the Committee under Treas. Reg. Section 1.409A-3(j)(4)(ii) (domestic relations order), (j)(4)(iii) (conflicts of interest), or (j)(4)(vi) (payment of employment taxes):

(i) if the payment or distribution is payable in a lump sum, the Optionee’s right to receive payment or distribution of such non-exempt deferred compensation will be delayed until the earlier of the Optionee’s death or the first day of the seventh month following the Optionee’s separation from service; and

(ii) if the payment or distribution is payable over time, the amount of such non-exempt deferred compensation that would otherwise be payable during the six-month period immediately following the Optionee’s separation from service will be accumulated and the Optionee’s right to receive payment or distribution of such accumulated amount will be delayed until the earlier of the Optionee’s death or the first day of the seventh month following the Optionee’s separation from service, whereupon the accumulated amount will be paid or distributed to the Optionee and the normal payment or distribution schedule for any remaining payments or distributions will resume.

For purposes of this Plan, the term “Specified Employee” has the meaning given such term in Code Section 409A and the final regulations thereunder, provided, however, that, as permitted in such final regulations, the Corporation’s Specified Employees and its application of the six-month delay rule of Code Section 409A(a)(2)(B)(i) shall be determined in accordance with rules adopted by the Board or any committee of the Board, which shall be applied consistently with respect to all nonqualified deferred compensation arrangements of the Corporation, including this Plan.

APPENDIX

The following definitions shall be in effect under the Plan:

A. Board shall mean the Corporation's Board of Directors.

B. Code shall mean the Internal Revenue Code of 1986, as amended. Reference to a specific Section of the Code or regulation thereunder shall include such Section or regulation, any valid regulation promulgated under such Section, and any comparable provision of any future law, legislation or regulation amending, supplementing or superseding such Section or regulation.

C. Committee shall mean a committee of two (2) or more Board members appointed by the Board to exercise one or more administrative functions under the Plan.

D. Common Stock shall mean the Corporation's common stock.

E. Corporate Transaction shall mean either of the following shareholder- approved transactions to which the Corporation is a party:

(i) a merger or consolidation in which securities possessing more than fifth percent (50%) of the total combined voting power of the Corporation's outstanding securities are transferred to a person or persons different from the persons holding those securities immediately prior to such transaction, or

(ii) the sale, transfer or other disposition of all or substantially all of the Corporation's assets in complete liquidation or dissolution of the Corporation.

F. Corporation shall mean Lexar Media, Inc., a California corporation.

G. Disability shall mean the inability of the Optionee or the Participant to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment and shall be determined by the Plan Administrator on the basis of such medical evidence as the Plan Administrator deems warranted under the circumstances. Notwithstanding the foregoing, for any Options that constitute a nonqualified deferred compensation plan within the meaning of Section 409A(d) of the Code, "Disability" has the meaning given such term in Section 409A of the Code.

H. Employee shall mean an individual who is in the employ of the Corporation (or any Parent or Subsidiary), subject to the control and direction of the employer entity as to both the work to be performed and the manner and method of performance.

I. Exercise Date shall mean the date on which the Corporation shall have received written notice of the option exercise.

J. Fair Market Value per share of Common Stock on any relevant date shall be determined in accordance with the following provisions:

(i) If the Common Stock is at the time traded on the Nasdaq National Market, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question, as such price is reported by the National Association of Securities Dealers on the Nasdaq National Market or any successor system. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(ii) If the Common Stock is at the time listed on any Stock Exchange, then the Fair Market Value shall be the closing selling price per share of Common Stock on the date in question on the Stock Exchange determined by the Plan Administrator to be the primary market for the Common Stock, as such price is officially quoted in the composite tape of transactions on such exchange. If there is no closing selling price for the Common Stock on the date in question, then the Fair Market Value shall be the closing selling price on the last preceding date for which such quotation exists.

(iii) If the Common Stock is at the time neither listed on any Stock Exchange nor traded on the Nasdaq National Market, then the Fair Market Value shall be determined by the Plan Administrator after taking into account such factors as the Plan Administrator shall deem appropriate.

K. Incentive Option shall mean an option which satisfies the requirements of Code Section 422.

L. Involuntary Termination shall mean the termination of the Service of any individual which occurs by reason of:

(i) such individual's involuntary dismissal or discharge by the Corporation for reasons other than Misconduct, or

(ii) such individual's voluntary resignation following (A) a change in his or her position with the Corporation which materially reduces his or her level of responsibility, (B) a reduction in his or her level of compensation (including base salary, fringe benefits and target bonuses under any corporate-performance based bonus or incentive programs) by more than fifteen percent (15%) of (C) a relocation of such individual's place of employment by more than fifty (50) miles, provided and only if such change, reduction or relocation is effected without the individual's consent.

M. Misconduct shall mean the commission of any act of fraud, embezzlement or dishonesty by the Optionee or Participant, any unauthorized use or disclosure by such person of confidential information or trade secrets of the Corporation (or any Parent or Subsidiary), or any other intentional misconduct by such person adversely affecting the business or affairs of the Corporation (or any Parent or Subsidiary) in a material manner. The foregoing definition shall not be deemed to be inclusive of all the acts or omissions which the Corporation (or any Parent or Subsidiary) may consider as grounds for the dismissal or discharge of any Optionee, Participant or other person in the Service of the Corporation (or any Parent or Subsidiary).

N. 1934 Act shall mean the Securities Exchange Act of 1934, as amended.

O. Non-Statutory Option shall mean an option not intended to satisfy the requirements of Code Section 422.

P. Option Grant Program shall mean the option grant program in effect under the Plan.

Q. Optionee shall mean any person to whom an option is granted under the Plan.

R. Parent shall mean any corporation (other than the Corporation) in an unbroken chain of corporations ending with the Corporation, provided each corporation in the unbroken chain (other than the Corporation) owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

S. Participant shall mean any person who is issued shares of Common Stock under the Stock Issuance Program.

T. Plan shall mean the Corporation's 1996 Stock Option/Stock Issuance Plan, as set forth in this document.

U. Plan Administrator shall mean either the Board or the Committee acting in its capacity as administrator of the Plan.

V. Service shall mean the provision of services to the Corporation (or any Parent or Subsidiary) by a person in the capacity of an Employee, a non-employee member of the board of directors or a consultant or independent advisor, except to the extent otherwise specifically provided in the documents evidencing the option grant.

W. Stock Exchange shall mean either the American Stock Exchange or the New York Stock Exchange.

X. Stock Issuance Agreement shall mean the agreement entered into by the Corporation and the Participant at the time of issuance of shares of Common Stock under the Stock Issuance Program.

Y. Stock Issuance Program shall mean the stock issuance program in effect under the Plan.

Z. Subsidiary shall mean any corporation (other than the Corporation) in an unbroken chain of corporations beginning with the Corporation, provided each corporation (other than the last corporation) in the unbroken chain owns, at the time of the determination, stock possessing fifty percent (50%) or more of the total combined voting power of all classes of stock in one of the other corporations in such chain.

AA. 10% Shareholder shall mean the owner of stock (as determined under Code Section 424(d)) possessing more than ten percent (10%) of the total combined voting power of all classes of stock of the Corporation (or any Parent or Subsidiary).

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

CONFIDENTIAL

BOISE SUPPLY TERMINATION AND AMENDMENT AGREEMENT

This **BOISE SUPPLY TERMINATION AND AMENDMENT AGREEMENT** (“**Agreement**”) is made and entered into as of the 10th day of October, 2008 (“**Effective Date**”), by and among Intel Corporation, a Delaware corporation (“**Intel**”), Micron Technology, Inc., a Delaware corporation (“**Micron**”), and IM Flash Technologies, LLC, a Delaware limited liability company (“**Joint Venture Company**”). Each of Intel, Micron, and Joint Venture Company may be referred to herein individually as a “**Party**” and collectively as the “**Parties**.”

RECITALS

- A. Pursuant to the Joint Venture Documents (as defined hereinafter) and the transactions contemplated thereby, Micron and Intel have formed the Joint Venture Company.
- B. The Joint Venture Documents include the Boise Supply Agreement (as defined hereinafter) pursuant to which Micron supplies to the Joint Venture Company Products (as defined below) manufactured at Micron’s fabrication facility in Boise, Idaho and which Products, in turn are supplied by the Joint Venture Company to Intel and Micron under the Supply Agreements (as defined below).
- C. Intel no longer desires the Joint Venture Company to supply Intel with Products made at Micron’s fabrication facility in Boise, Idaho.
- D. The Parties desire that this Agreement terminate the Boise Supply Agreement and outline the commitments of Micron and Intel and amends the Joint Venture Documents resulting from the termination of the Boise Supply Agreements, as defined below.

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:

ARTICLE I.

DEFINITIONS; CERTAIN INTERPRETIVE MATTERS

Section 1.01 Definitions.

Capitalized terms used in this Agreement shall have the respective meanings set forth below in this Section 1.01 unless defined elsewhere in this Agreement:

“**Agreement**” shall have the meaning set forth in the preamble to this Agreement.

“**Applicable Joint Venture**” shall have the meaning set forth in the Omnibus 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.

“Boise Fab” means that Micron fabrication facility located in Boise, Idaho that maintains a NAND flash memory product line.

“Boise Side Letter Agreement” means the Boise Side Letter Agreement by and among Micron, the Joint Venture Company and Intel dated July 13, 2006.

“Boise Supply Agreement” means the Boise Supply Agreement by and between the Joint Venture Company and Micron dated January 6, 2006.

“Business Day” means a day that is not a Saturday, Sunday or other bank holiday in the State of New York or country of organization of any Applicable Joint Venture.

“Effective Date” shall have the meaning set forth in the preamble to this Agreement.

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

“Intel” shall have the meaning set forth in the preamble to this Agreement.

“Joint Venture Company” shall have the meaning set forth in the preamble to this Agreement.

“Joint Venture Documents” means the Master Agreement relating to the formation of the Joint Venture Company, and each agreement referenced therein (whether directly or indirectly through reference in any of such referenced agreements) and includes any such agreements as amended and/or restated from time to time, as well as this Agreement.

“LLC Operating Agreement” means the Amended and Restated Limited Liability Company Operating Agreement by and between Micron and Intel dated February 27, 2007.

“Master Agreement” means the Master Agreement by and between Micron and Intel dated November 18, 2005.

“Member Activities Letter Agreement” means the Amended and Restated Member Activities Letter Agreement by and between Micron and Intel dated February 27, 2007, as amended.

“Micron” shall have the meaning set forth in the preamble to this Agreement.

“Omnibus Agreement” means the Omnibus Agreement by and between Micron and Intel dated February 27, 2007.

“Party” and **“Parties”** shall have the meaning set forth in the preamble to this Agreement.

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

“**Products**” means certain NAND flash memory products, as more specifically defined in the Supply Agreements.

“**Purchase Orders**” shall have the meaning set forth in the Boise Supply Agreement.

“**Scrap, or Scrapped**” means the lawful disposal of WIP Product by Micron other than by commercial sale of such WIP Product in any form.

“**Ship, or Shipped**” means the customary transfer of WIP Product by Micron to the Joint Venture Company following normal procedures under the Boise Supply Agreement.

“**Supply Agreement**” means either the Supply Agreement between Micron and the Joint Venture Company dated January 6, 2006 or the Supply Agreement between Intel and the Joint Venture Company dated January 6, 2006, as the context dictates, and “**Supply Agreements**” means both of them.

Section 1.02 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 visa 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” will mean calendar days.

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

ARTICLE II. **TERMINATION OF BOISE SUPPLY AGREEMENT**

Section 2.01 Termination of Agreement. The Boise Supply Agreement is terminated pursuant to Section 10.1(ii) thereof, effective as of the Effective Date. Except as modified by Section 2.02 and 2.03 below, those obligations of Micron and the Joint Venture Company intended to survive termination pursuant to Section 10.4 of the Boise Supply Agreement shall continue to so survive in accordance with their respective terms. The Boise Side Letter Agreement is also terminated as of the Effective Date.

Section 2.02 Wind Down of Supply.

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(a) On the Effective Date, the Joint Venture Company will cease submitting non-zero demand forecasts to Micron on behalf of Intel for Products that would have been manufactured at the Boise Fab.

(b) On the Effective Date, Micron will cease initiating wafer production at the Boise Fab for Products destined for supply to the Joint Venture Company under the Boise Supply Agreement.

(c) For those Products that are intended to fulfill the Joint Venture Company's supply obligations to Intel under the Supply Agreement with Intel and that have already begun the manufacturing process at the Boise Fab on or before the Effective Date ("**WIP Product**"), Micron will complete or discontinue manufacture of, or otherwise deal with such WIP Product as Micron deems appropriate.

(d) Micron will supply to the Joint Venture Company those Products finished before the Effective Date or finished after the Effective Date from WIP Product, in each case upon the terms and conditions of the Boise Supply Agreement; *provided, however*, that unless Micron and the Joint Venture Company agree to amend the following date, Micron will not deliver to the Joint Venture Company or finish manufacturing any WIP Products after December 4, 2008 and *further provided* that the price of WIP Products shall be as set forth in Section 3.03.

Section 2.03 Amended Surviving Obligations. Notwithstanding anything to the contrary in the Boise Supply Agreement:

(a) All Purchase Orders placed under the Boise Supply Agreement are hereby terminated except to the extent such Purchase Orders pertain to the Products Shipped by Micron to the Joint Venture Company as a result of those activities contemplated under Section 2.02. The Joint Venture Company and Micron each remain bounded to fulfill their respective obligations with respect to such Purchase Orders in accordance with the applicable terms of the Boise Supply Agreement as may be amended by this Agreement.

(b) Section IV of Schedule 2.6 of the Boise Supply Agreement is not applicable. Micron retains ownership of all Additional Equipment free and clear of all liens, encumbrances and obligations with respect thereto to the Joint Venture Company.

(c) Sections III and IV of Schedule 4.6 of the Boise Supply Agreement are not applicable, and no calculations thereunder will be made. To the extent that any calculation thereunder would have required or would require Micron to make any payment(s) to the Joint Venture Company, such payments are fully discharged and Micron is forever released from making them.

(d) All masks, reticles, probe cards and other materials in the possession of Micron used to manufacture Products under the Boise Supply Agreement, whether originally purchased by Micron or provided to Micron by the Joint Venture Company, shall be and remain owned solely by Micron.

Section 2.04 Board of Managers. Intel and Micron shall cause the Board of Managers and the Manufacturing Committee and Planning Subcommittee to promptly revise the Initial Business

Plan, Ramp Plan, Operating Plan, Performance Criteria, Products (as each of the foregoing terms is defined in the Boise Supply Agreement) and other operating parameters of the Joint Venture Company if and as necessary for the Joint Venture Company to fulfill its obligations to Micron and Intel under their respective Supply Agreement in recognition that the Joint Venture Company no longer has the right to purchase Products made by Micron in its Boise Fab (other than those Products that are the subject of Section 2.02 above).

Section 2.05 Demand Forecasts. Intel and Micron shall each promptly revise their respective Demand Forecasts (as defined in the Supply Agreements) made to the Joint Venture Company under their respective Supply Agreement if and as necessary for the Joint Venture Company to fulfill its obligations to Micron and Intel under their respective Supply Agreement in recognition that the Joint Venture Company no longer has the right to purchase Products made by Micron in its Boise Fab (other than those Products that are the subject of Section 2.02).

ARTICLE III. TERMINATION CONSIDERATION

Section 3.01 Capital Contributions.

(a) On or before November 10, 2008, Intel shall make a capital contribution to the Joint Venture Company in the amount of Twenty Three Million Seven Hundred Thousand Dollars and Three Cents (\$23,700,000.03).

(b) On or before November 10, 2008, Micron shall make a capital contribution to the Joint Venture Company in the amount of Twenty Four Million Six Hundred Sixty-Seven Thousand Three Hundred and Forty-Seven United States Dollars (\$24,667,347.00).

Section 3.02 Termination Payment. On or before November 10, 2008, the Joint Venture Company shall pay to Micron a termination fee in the amount of Forty Eight Million Three Hundred Sixty-Seven Thousand Three Hundred Forty-Seven United States Dollars and Three Cents (\$48,367,347.03).

Section 3.03 Disposition of WIP Product.

(a) The price of the WIP Product Shipped to the Joint Venture Company pursuant to Section 2.02 shall be Micron's actual costs, as such costs are calculated pursuant to Section II of Schedule 4.6 of the Boise Supply Agreement, but without any adjustments pursuant to Section III of Schedule 4.6 or otherwise.

(b) Micron will invoice the Joint Venture Company for (i) Micron's actual costs incurred in connection with all WIP Products Scrapped pursuant to Section 2.02 and (ii) eighty per cent (80%) of Micron's actual costs incurred in connection with M40 WIP Products not Scrapped and not Shipped to the Joint Venture Company, in both cases (i) and (ii) as such costs are calculated pursuant to Section II of Schedule 4.6 of the Boise Supply Agreement, but without any adjustments pursuant to Section III of Schedule 4.6 or otherwise. Micron will provide such invoices promptly after the end of each applicable fiscal month of Micron, and the Joint Venture Company shall pay to Micron the amount of such invoice within thirty (30) days of receipt of invoice. The Joint Venture Company shall submit to Intel a copy of each such invoice,

and Intel shall pay to the Joint Venture Company the amount thereof within thirty (30) days of Intel's receipt of invoice.

Section 3.04 Payment Method. The foregoing contributions and payments shall be made by wire transfer in United States Dollars in immediately available funds to the following bank accounts, as applicable:

If to Micron:

Beneficiary: Micron Technology, Inc.
 Bank Name: [***]
 Bank Address: Portland, Oregon
 [***]
 [***]
 [***]

If to the Joint Venture Company:

Beneficiary: IM Flash Technologies, LLC
 [***]
 Bank Address: Portland, Oregon
 [***]
 [***]
 [***]

ARTICLE IV.
AMENDMENTS TO JOINT VENTURE DOCUMENTS

Section 4.01 Omnibus Agreement. The last paragraph in the definition of "Operating Metric Event" in the Omnibus Agreement is hereby deleted as of the Effective Date.

Section 4.02 LLC Operating Agreement. Section 12.5(c)(4) and the first sentence of Section 13.14 in the LLC Operating Agreement are hereby deleted.

Section 4.03 Member Activities Letter Agreement. In the Member Activities Letter Agreement:

(a) The phrase at the beginning of Section 1.1(A) which reads "Except as provided in Section 1.1(B)(2)" is hereby revised to read "Except as provided in Section 1.1(B)(2) and 1.1(D)".

(b) A new Section 1.1(D) is inserted as follows:

"Notwithstanding anything to the contrary in this or the other Joint Venture Documents, Micron may Manufacture Restricted Products in the Boise Fab for sale or other commercial disposition by Micron and its Affiliated Companies without any restriction or any accounting to the Joint Venture Company, other Applicable Joint Venture, Intel or Affiliated Company of Intel."

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Section 4.04 Joint Venture Document. This Agreement is a "Joint Venture Document."

Section 4.05 Supply Agreements. In both the Supply Agreements, Schedule 4.8 is hereby amended to read as follows:

"The Parties agree that Price is the accumulation of: (i) the wafer cost for probed wafers from any Facility and any other direct costs incurred by the Joint Venture Company, including, but not limited to, amortization of the pre-paid lease as set forth in the MTV Lease Agreement; (ii) the price the Joint Venture Company pays for assembling and packaging probed wafers, (iii) the price the Joint Venture Company pays for final testing of assembled and packaged units, and (iv) the cost paid by the Joint Venture Company for finished goods services. All costs shall be determined on a basis of accounting mutually agreed by the Members. For avoidance of doubt, amortization of the pre-paid lease as set forth in the MTV Lease Agreement shall be calculated in accordance with Modified GAAP."

Section 4.06 Ownership and Sharing Interests. None of the Parties' respective Interest, Economic Interests, Percentage Interests or Sharing Interest (as such terms are defined in the Joint Venture Documents, or the Omnibus Agreement) shall be affected by the terms of this Agreement or by the performance of any obligations hereunder.

Section 4.07 No Other Amendments. Except as provided in this Article IV, no other amendments to the Joint Venture Documents are intended by this Agreement.

ARTICLE V. MISCELLANEOUS

Section 5.01 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, (c) the expiration of five (5) Business Days after the day when mailed in the United States by certified or registered mail, postage prepaid, or (d) 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 Intel:

Intel Corporation
1900 Prairie City Road
FM3-63
Folsom, CA 95630
Attention: NPG General Manager
Facsimile: 916-377-2756

with a copy to:

Intel Corporation
2200 Mission College Blvd.
Mail Stop SC4-203
Santa Clara, CA 95054
Attention: General Counsel
Facsimile: (408) 653-8050

If to Micron :

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Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attention: General Counsel
Facsimile: (208) 368-4537

If to the Joint Venture Company.

IM Flash Technologies, LLC
2550 East 3400 North
Lehi, UT 84043
Attention: David A. Baglee; Rodney Morgan
Facsimile: (801) 767-5370

Section 5.02 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.

Section 5.03 Assignment. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each Party hereto. Except as permitted by the Omnibus Agreement or Joint Venture Documents, 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, without the prior written consent of the non-assigning Party.

Section 5.04 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.

Section 5.05 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.

Section 5.06 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 located in Delaware, 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. Process in any such suit, action or proceeding may be served on any Party anywhere in the world, whether within or without the jurisdiction of any such court.

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Section 5.07 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 5.08 Entire Agreement. This Agreement and, for so long as any applicable terms of the Omnibus Agreement and Joint Venture Documents remain in effect, the applicable term(s) of the Omnibus Agreement and Joint Venture Documents, constitute 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.

Section 5.09 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.

Section 5.10 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 page follows]

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IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the Effective Date.

INTEL CORPORATION

By: /s/ Robert J. Baker
Name: Robert J. Baker
Title: Senior Vice President

MICRON TECHNOLOGY, INC.

By: /s/ D. Mark Durcan
Name: D. Mark Durcan
Title: President and COO

IM FLASH TECHNOLOGIES, LLC

By: /s/ David Baglee
Name: David Baglee
Title: Executive Officer

This is the signature page for the Boise Supply Termination and Amendment Agreement entered into by and among Intel Corporation, Micron Technology, Inc., and IM Flash Technology, LLC

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

LOAN AGREEMENT

This Loan Agreement (as amended, restated, modified or otherwise supplemented from time to time, this “**Agreement**”) is entered into as of November 26, 2008 (the “**Agreement Date**”), by and among **Micron Semiconductor B.V.**, a private limited company organized under the laws of The Netherlands (the “**Borrower**”), **Micron Technology, Inc.**, a corporation organized under the laws of the State of Delaware, U.S.A. (the “**Guarantor**”), and **Nan Ya Plastics Corporation**, a company incorporated under the laws of the Republic of China (the “**Lender**”).

RECITALS

A. WHEREAS, on October 11, 2008, Qimonda AG, a company incorporated under the laws of Germany (“**Qimonda**”), Qimonda Holding B.V., a private limited company organized under the laws of The Netherlands, the Borrower and the Guarantor entered into a Share Purchase Agreement, a copy of which is attached hereto as Exhibit A (the “**Share Purchase Agreement**”), pursuant to which, Qimonda and its Affiliates will sell to the Borrower, a Subsidiary of the Guarantor, 1,184,088,059 shares of common stock of Inotera Memories, Inc., a company limited by shares under the laws of the Republic of China (the “**Company**”), owned of record by Qimonda and/or its Affiliates (as such shares may be adjusted, increased or decreased as a result of a stock split, reverse stock split or reclassification, the “**Shares**”).

B. WHEREAS, Nanya Technology Corporation, a company incorporated under the laws of the Republic of China (“**NTC**”), has committed to, either individually or through one or more of its affiliates, provide a two-year loan to the Borrower in support of the proposed acquisition per a Commitment Letter dated October 11, 2008 (such letter as amended or supplemented, the “**Commitment Letter**”).

C. WHEREAS, in partial fulfillment of NTC’s obligation under the Commitment Letter, the Lender, as an Affiliate of NTC, hereby agrees to extend a loan facility to the Borrower and the Borrower hereby agrees to borrow the same from the Lender, and NTC and the Guarantor are concurrently with the execution of this Agreement supplementing the Commitment Letter to reflect NTC’s continuing commitment to provide [***] a one-year loan upon the maturity of the loan contemplated hereby.

D. WHEREAS, the Guarantor is willing to guarantee all of the Borrower’s obligations hereunder, and the Borrower will, and the Guarantor will cause its Subsidiary who owns part of the Shares to, pledge in favor of the Lender all of the Shares as security to secure the due and punctual performance of all of the Borrower’s obligations hereunder.

E. WHEREAS, the Lender shall, subject to the terms and conditions of this Agreement, be and remain the holder of the Loan and agrees that the Loan is intended to satisfy the requirements of Section 881(c)(2) of the Internal Revenue Code and Section 1.871-14 of the Treasury Regulations.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITION.

1.1 Defined Terms.

“**Affiliate**” means, with respect to any specified Person, any other Person that, directly or indirectly, including through one or more intermediaries, controls, is controlled by, or is under common control with such specified Person.

“**Agreement**” shall have the meaning set forth in the preamble of this Agreement.

“**Agreement Date**” shall have the meaning set forth in the preamble of 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.

“**Borrower**” shall have the meaning set forth in the preamble of this Agreement.

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

“**Collateral**” shall have the meaning set forth in Section 5.1 of this Agreement.

“**Confidential Information**” shall have the meaning set forth in Section 10.16(a) of this Agreement.

“**Commitment Letter**” shall have the meaning set forth in the Recitals to this Agreement.

“**Company**” shall have the meaning set forth in the Recitals to this Agreement.

“**Control**” (whether or not capitalized) 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.

“**Drawdown Date**” means the date on which the Lender makes available and releases the Loan to the Borrower.

“**Event of Default**” means any of the events described in Section 9.1 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.

“**Guarantee**” shall have the meaning set forth in Section 4.1 of this Agreement.

“**Guarantor**” shall have the meaning set forth in the preamble of this Agreement.

“**Guarantor SEC Filings**” means the reports, forms and other filings that have been made by the Guarantor with the United States Securities and Exchange Commission.

“**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“**Interest Period**” means three (3) months.

“**Lender**” shall have the meaning set forth in the preamble of this Agreement.

“**Loan**” shall have the meaning set forth in Section 2.1(a) of this Agreement.

“**Loan Documentation**” means this Agreement and the Pledge Agreement.

“**Material Adverse Effect**” means a material adverse effect on (a) the business, operations, property, or condition (financial or otherwise) of the Guarantor and its Subsidiaries taken as a whole; (b) the ability of the Borrower or the Guarantor to perform its obligations under the Loan Documentation to which it is a party; or (c) the legality, validity or enforceability of the Loan Documentation or the rights or remedies of the Lender under any of the Loan Documentation.

“**Maturity Date**” has the meaning set forth in Section 2.2(a) of this Agreement.

“**Micron Technology Asia Pacific**” means Micron Technology Asia Pacific, Inc., an Idaho corporation.

“**Month**” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

(a) subject to paragraph (c) below, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

(b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and

(c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will apply only to the last Month of any period.

“**New Lender**” shall have the meaning set forth in Section 2.2(b) of this Agreement.

“**New Loan**” shall have the meaning set forth in Section 2.2(b) of this Agreement.

“**New Loan Documentation**” shall have the meaning set forth in Section 2.2(c) of this Agreement.

“**Non-Attributable Event**” has the meaning set forth in Section 2.2(d) of this Agreement.

“**Novation Agreement**” has the meaning set forth in Section 2.2(b) of this Agreement.

“**NTC**” shall have the meaning set forth in the Recitals to this Agreement.

“**Original Financial Statements**” means the audited consolidated balance sheets, and related statements of operations, cash flow and shareholder’s equity, in each case, of the Guarantor and its Subsidiaries for the fiscal year ended August 28, 2008.

“**Permitted Liens**” means (a) liens for taxes not yet delinquent or liens for taxes being contested in good faith and by appropriate proceedings for which adequate reserves have been established to the extent required by U.S. GAAP; (b) liens in respect of property or assets imposed by law which were incurred in the ordinary course of business, which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings; and (c) liens in favor of the Lender; provided that, in the case of a lien described in the foregoing clause (a) or (b), such lien does not have priority over the liens granted to the Lender under the Pledge 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.

“**Pledge**” shall have the meaning set forth in Section 5.1 of this Agreement.

“**Pledge Agreement**” shall have the meaning set forth in Section 5.1 of this Agreement.

“**Pledgor**” shall have the meaning set forth in Section 5.1 of this Agreement.

“**Potential Event of Default**” means any event or circumstance that with the giving of notice or the passage of time (or both) would constitute an Event of Default.

“**Qimonda**” shall have the meaning set forth in the Recitals to this Agreement.

“**ROC**” means the Republic of China.

“**Share Purchase Agreement**” shall have the meaning set forth in the Recitals to this Agreement.

“**Shares**” shall have the meaning set forth in the Recitals of this 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.

“**TDCC**” means the Taiwan Depository & Clearing Corporation.

“**Taxes**” includes any tax, levy, duty, charge, impost, fee, deduction or withholding of any nature now or hereafter imposed, levied, collected, withheld or assessed by any taxing or other authority and includes any interest, penalty or other charge payable or claimed in respect thereof.

“**Term**” shall have the meaning set forth in Section 10.4 of this Agreement.

“**TTLA**” means the Technology Transfer and License Agreement for 68-50NM Process Nodes, made and entered into as of April 21, 2008, by and between the Guarantor and NTC, as amended, amended and restated, modified or otherwise supplemented from time to time.

[***] shall have the meaning set forth in Section 9.5 of this Agreement.

“**2nd Closing**” shall have the meaning set forth in Section 2.4 of the Share Purchase Agreement.

“**2nd Close Shares**” shall have the meaning set forth in Section 2.4 of the Share Purchase Agreement.

1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (i) all references to Sections, Articles or Exhibits are to Sections, Articles or Exhibits 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 ROC 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 party hereto 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.

2. **TERMS OF LOAN AND REPAYMENT.**

2.1 Provision of Loan.

(a) Subject to the terms and conditions of this Agreement, the Lender shall make available a loan facility to the Borrower in the principal amount of two hundred million U.S. dollars (\$200,000,000) (the “**Loan**”) and the Borrower agrees to borrow the Loan.

(b) Subject to the Borrower's satisfaction or the Lender's waiver of the conditions set forth in Article 6 of this Agreement, the Lender shall make available and release the entire principal amount of the Loan to the Borrower on the Drawdown Date (which shall be a Business Day) by wire transfer to the account designated by the Borrower, the details of which is set forth in a writing delivered by the Borrower to the Lender.

2.2 Maturity of the Loan.

(a) The Borrower shall repay the Loan in full on the first anniversary of the Drawdown Date (the "**Maturity Date**"), unless the Loan is accelerated pursuant to this Agreement.

(b) Unless otherwise directed by the Borrower by written notice to the Lender no later than fifteen (15) Business Days prior to the Maturity Date, the Lender [***] (the "**New Lender**") to make available to the Borrower a loan in the principal amount of two hundred million U.S. dollars (\$200,000,000) (the "**New Loan**") on the Maturity Date. The New Loan may be effected by either (i) the assignment by the Lender of its rights and obligations under the existing Loan Documentation to the New Lender and, concurrently therewith, the entry into by the New Lender, the Borrower and the Guarantor of a novation agreement substituting the New Lender for the Lender and extending the Maturity Date of the Loan to the second anniversary of the Drawdown Date (the "**Novation Agreement**") or (ii) the advance of funds to (or on behalf of) the Borrower and the entry into the New Loan Documentation.

(c) In connection with the New Loan: (i) in the case of Section 2.2(b)(i), the Borrower and the Guarantor shall enter into the Novation Agreement, (ii) in the case of Section 2.2(b)(ii), the New Lender, the Borrower, the Guarantor and Micron Technology Asia Pacific shall enter into loan documentation containing terms and conditions substantially the same as this Agreement and the Pledge Agreement (the "**New Loan Documentation**"); provided that the terms and conditions of the New Loan Documentation shall be no less favorable to the Borrower, the Guarantor or Micron Technology Asia Pacific than the Loan Documentation and the New Loan Documentation shall not contain the representations and warranties set forth in Sections 7.4, 7.5 or 7.8. The obligation of the New Lender to provide the New Loan shall be subject to: (i) the creation and perfection of a first-priority pledge on the same Collateral in favor of the New Lender; and (ii) no Event of Default has occurred and is continuing (other than a Non-Attributable Event). At least sixty (60) days prior to the Maturity Date, the Lender will identify the New Lender to the Borrower and provide proposed drafts of the Novation Agreement or the New Loan Documentation, as applicable. The New Loan shall be used exclusively for repayment of the Loan and shall be remitted directly to the bank account designated by the Lender.

(d) The Borrower's failure to obtain the New Loan and to repay the Loan upon the maturity of the Loan due to cause(s) not attributable to the Borrower, the Guarantor or Micron Technology Asia Pacific (a "**Non-Attributable Event**") shall not be deemed as an Event of Default under Section 9.1(a) of this Agreement, it being understood that the term Non-Attributable Event includes the failure of the New Lender to provide the New Loan so long

as the Borrower has used commercially reasonable efforts to negotiate and enter into the New Loan Documentation with the New Lender. If a Non-Attributable Event occurs, during the period between the occurrence of such Non-Attributable Event and the date the proceeds of the New Loan are disbursed on behalf of the Borrower to the Lender's designated bank account, (i) the Lender will not exercise any of its rights or remedies under Section 9.2, the Loan Documentation or otherwise, (ii) no assignment shall be made as set forth in Section 10.3, (iii) no setoff contemplated by Section 10.3 shall be made, and (iv) the past due interest rate under Section 3.4 shall not apply.

2.3 Use of Proceeds. All proceeds of the Loan shall be exclusively used to finance the purchase of the 2nd Close Shares and to pay related fees and expenses.

2.4 Repayment Mechanics. All repayments hereunder shall be made by wire transfer of such amounts in immediately available funds denominated in U.S. dollars to the Lender, at such place and to such account as the Lender shall designate in a written notice to the Borrower. Payments shall be credited first to costs and expenses due and payable hereunder (including the costs incurred under Sections 9.3), then to the accrued interest then due and payable and the remainder applied to principal. The Loan may be prepaid, without penalty or premium, in whole or in part from time to time, provided that:

(a) Notice: the Borrower shall have given the Lender not less than three (3) Business Days' (or such shorter period as may be agreed between the Borrower and the Lender) prior written notice specifying the amount to be prepaid and the date of prepayment; and

(b) Interest: the Borrower shall concurrently pay accrued and unpaid interest on the full amount of the Loan to be prepaid on the date of such prepayment.

2.5 Taxes.

(a) All payments to be made by the Borrower or the Guarantor to the Lender under the Loan Documentation shall be made free and clear of any deduction or withholding on account of any Taxes. If the Borrower, the Guarantor or any other person is required by any law or regulation to make any such deduction or withholding, the Borrower or the Guarantor (as applicable) shall (i) pay such deducted or withheld amount to the applicable tax authorities and, promptly upon the Lender's request, deliver to the Lender the certificate or receipt evidencing such payment and (ii) pay such additional amount as will ensure that the Lender receives and is entitled to retain, free and clear of any such deduction or withholding, the full amount which it would have received if no such deduction or withholding had been required. Without limiting the foregoing, if the Lender or any other person on the Lender's behalf is required by any law or regulation to make a payment on account of any such withholding Tax or incurs any liability in respect thereof, the Borrower or the Guarantor (as applicable) shall, within ten (10) Business Days after demand by the Lender (which demand shall provide a calculation in reasonable detail of such payment), indemnify the Lender against such payment or liability and any interest, penalty or expense payable or incurred in connection therewith. The obligations of the Borrower and the Guarantor under this Section 2.5(a) are subject to (i) the Lender executing any applicable tax withholding forms (Form W-8BEN or its equivalent or any other

form prescribed by law as a basis for claiming exemption from or reduction in withholding tax) as reasonably requested by the Borrower, Guarantor or the United States Internal Revenue Service for United States taxation purposes, together with such supplementary documentation necessary to allow the Borrower to determine whether the withholding or deduction is required to be made, and (ii) the representation and covenant contemplated by Section 10.13 being true and complied with. The Lender agrees to use its commercially reasonable efforts, at the cost and expense of the Borrower and/or Guarantor, to otherwise assist the Borrower and/or the Guarantor to obtain the exemption status for any such deduction or withholding. Nothing in this Section 2.5 shall require the Borrower or the Guarantor to make any payment on or indemnify the Lender for any Taxes imposed on or measured by the Lender's overall net income (however denominated) and franchise Taxes imposed on the Lender under applicable ROC laws.

(b) If the Lender determines that it has received a refund of, or reduction in its liability for, any Taxes as a result of amounts paid or withheld by the Borrower and/or the Guarantor pursuant to this Section 2.5, the Lender shall pay over such refund or reduction to the Borrower and/or the Guarantor (but only to the extent of the amounts paid or withheld by the Borrower and/or the Guarantor under this Section 2.5 with respect to the Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the Lender and without interest (other than any interest paid by the relevant governmental authority with respect to such refund or reduction), provided that the Borrower and/or the Guarantor, upon the request of the Lender, agrees to repay the amount paid over to the Borrower and/or the Guarantor to the Lender in the event the Lender is required to repay such refund or reduction to such Governmental Entity. This Section 2.5 shall not be construed to require the Lender to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower and/or the Guarantor or any other person.

3. INTEREST.

3.1 Calculation of Interest. The rate of interest on the Loan for each Interest Period shall be the percentage rate per annum, which is the aggregate of the applicable three-month LIBOR and a margin of two percent (2%), rounded up to the nearest fourth decimal point. For the purpose of this Section 3.1, LIBOR shall mean (a) the British Bankers' Association's London Interbank Offered Rate for U.S. dollars for a tenor equal to (or most comparable to) the Interest Period displayed on the Reuters Screen Page 3750 at 11:00 a.m. (Taipei time) on the date which is two (2) Business Days prior to the commencement of the applicable Interest Period or (b) if the rate specified in clause (a) is not available for any reason, the offer rate for U.S. dollars for a tenor equal to (or most comparable to) the Interest Period displayed on Reuters Screen Page TAIFX3 at 11:00 a.m. (Taipei time) on the date which is two (2) Business Days prior to the commencement of the applicable Interest Period.

3.2 Interest Period. The initial Interest Period shall commence on the Drawdown Date, with each successive Interest Period commencing on the last day of the prior Interest Period.

3.3 Payment of Interest. The Borrower shall pay accrued interest in arrears on the Loan on the last day of each Interest Period, and the amount of interest shall be computed on the

basis of the actual number of days elapsed (including the first day but excluding the last day of such Interest Period) and a year of three hundred and sixty (360) days.

3.4 **Past Due Rate.** If the Borrower fails to pay any amount payable by it under the Loan on its due date, past due interest shall accrue on such unpaid amount at the rate of 10% per annum from the due date up to the date of actual payment of the unpaid amount (both before and after judgment). The Borrower shall pay past due interest (if unpaid) accruing on an unpaid sum at the end of each Interest Period applicable to that unpaid sum or on demand of the Lender.

4. GUARANTEE.

4.1 **Guarantee.** The Guarantor hereby fully and unconditionally guarantees the due and punctual payment of all amounts payable by the Borrower under this Agreement (the “**Guarantee**”), in each case when and as the same shall become due and payable, and, in each case, in accordance with the terms of this Agreement. The Guarantor hereby expressly waives its right to require the Lender to pursue or exhaust its legal or equitable remedies against the Borrower prior to exercising its rights hereunder against the Guarantor.

4.2 **Joint and Several Liability.** The Guarantor hereby agrees that its obligations hereunder shall be as if it were the principal debtor and not merely surety, and shall be absolute and unconditional, irrespective of, and unaffected by, any invalidity, irregularity or unenforceability of the Loan Documentation, any failure to enforce the provisions of the Loan Documentation, any waiver, modification or indulgence granted to the Borrower with respect thereto by the Lender, or any other circumstance that may otherwise constitute a legal or equitable discharge of a surety or guarantor. Except as otherwise expressly provided in the Loan Documentation, the Guarantor hereby waives diligence, presentment, demand of payment, filing of claims with a court in the event of merger or bankruptcy of the Borrower, any right to require a proceeding first against the Borrower or the Collateral, protest or notice with respect to any indebtedness evidenced thereby or hereby and all demands whatsoever, and covenants that the Guarantee of the Guarantor will not be discharged with respect to the Loan Documentation except by payment in full of all amounts owing in respect thereof. If at any time any payment under the Loan Documentation is rescinded or must be otherwise restored or returned upon the insolvency, bankruptcy or reorganization of the Borrower, the Guarantor's obligations hereunder with respect to such payment shall be reinstated as of the date of such recession, restoration or return as though such payment had become due but had not been made at such time.

5. PLEDGE AND SECURITY INTEREST.

5.1 **Pledge of the Shares.**

(a) Without prejudice to and in addition to Lender's right toward the Guarantor under Article 4 of this Agreement, as security for the performance in full of the obligations of the Borrower and the Guarantor under this Agreement, the Borrower, Micron Technology Asia Pacific (each, a “**Pledgor**” and collectively, the “**Pledgors**”) and the Lender shall enter into a share pledge agreement in the form and substance attached hereto as **Exhibit B** (the “**Pledge Agreement**”) and the Pledgors shall create a first priority security interest

maximum amount pledge in an amount not to exceed two hundred fifty million U.S. dollars (\$250,000,000) in favor of the Lender (the “**Pledge**”), in all of the right, title and interest of the Pledgors in and to (i) all of the Shares, and (ii) all rights and privileges of the Pledgors, whether now owned or hereafter acquired, with respect to the Shares, all proceeds, income and profits thereof and all property received in exchange or substitution therefore (items (i) and (ii) collectively, the “**Collateral**”).

(b) As soon as practical but in no event later than the next Business Day when the TDCC completes the entries of the 2nd Close Shares in the Borrower's custodian bank's depository account, the Pledgors shall, or shall cause their respective custodian bank to, immediately apply for the book-entry pledge of the Shares and perfect the Pledge on the same day such Pledge creation application is filed.

6. CONDITIONS PRECEDENT.

The Lender shall only be obligated to provide the Loan when each of the following conditions has been satisfied:

(a) The Lender shall have received this Agreement duly executed and delivered by the Borrower and the Guarantor.

(b) The Pledgors shall have become the legal record and beneficial owner of and shall have good and marketable title to its respective portion of the Shares, and the acquisition of the Shares shall have been approved by the Investment Commission of the ROC Ministry of Economic Affairs pursuant to the ROC Statute for Investment by Foreign Nationals.

(c) The Lender shall have received the Pledge Agreement, duly executed and delivered by the Pledgors, granting to the Lender, for its benefit, a security interest in the Collateral described therein together with such financing and assignment documents as may be provided in the Pledge Agreement and evidence reasonably satisfactory to the Lender with respect to the Lender's first priority security interest in the Collateral.

(d) The Lender shall have received certified copies of all action taken by the Borrower and/or the Guarantor authorizing the execution, delivery and performance of the Loan Documentation.

(e) The creation and perfection of the Pledge in a timely manner as set forth in Section 5.1 of this Agreement shall have been completed, which might be evidenced by any notices and acknowledgements required to perfect or give effect to the security created under the Loan Documentation, including, but not limited to, a securities passbook/statement produced by the securities agent of the Lender evidencing the creation of the Pledge.

(f) No Event of Default or Potential Event of Default shall have occurred and be continuing.

7. REPRESENTATIONS AND WARRANTIES.

Each of the Borrower and the Guarantor represents and warrants, jointly and severally, to the Lender that each of the representations, warranties and statements contained in the following Sections of this Article 7 is true and correct as of the Agreement Date.

7.1 Organization; Good Standing and Qualification. The Borrower is a private limited liability company duly incorporated and validly existing under the laws of The Netherlands. The Guarantor is a corporation duly incorporated and validly existing under the laws of the State of Delaware. Each of the Borrower and the Guarantor has all requisite corporate power and authority to own, lease and operate its properties and assets that it currently owns, leases or operates and to carry on its business as now conducted and as presently proposed to be conducted.

7.2 Authorization. All corporate action on the part of the Borrower and the Guarantor, their respective officers, directors and stockholders necessary for the authorization, execution and delivery of the Loan Documentation to which it is a party and the performance of all obligations of the Borrower and the Guarantor hereunder has been taken. Each of the Loan Documentation to which it is a party constitutes a valid and legally binding obligation of the Borrower and the Guarantor, as the case may be, enforceable against the Borrower and the Guarantor in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, moratorium, and other laws affecting creditor's rights generally and by equitable principles (regardless of whether enforcement is sought in equity or at law).

7.3 Governmental Consents. Other than (a) foreign investment approval from the Investment Commission of the ROC Ministry of Economic Affairs and (b) anti-competition approvals under Applicable Law, which are required for the 2nd Closing, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Entity on the part of the Borrower or the Guarantor is required in connection with the consummation of the transactions contemplated by the Loan Documentation except as have been made or obtained (it being understood that no representation or warranty is being made as to any such consents, approvals, orders, authorizations, registrations, qualifications, designations or filings which may be required in connection with the exercise by Lender of any of its rights and remedies against the Collateral).

7.4 Financial Statements.

(a) The Original Financial Statements were prepared in accordance with U.S. GAAP consistently applied save to the extent expressly disclosed in such Original Financial Statements.

(b) The Original Financial Statements and each other set of financial statements delivered by the Borrower and the Guarantor pursuant to Section 8.3 of this Agreement fairly present in all material respects the consolidated financial condition and results

of operations of the Guarantor and its Subsidiaries as at the dates or for the periods specified therein.

(c) Except as disclosed in the Guarantor SEC Filings, there has been no material adverse change in the condition (financial or otherwise), assets or business of the Guarantor and its Subsidiaries, taken as a whole, since the date of the Original Financial Statements.

7.5 No Proceedings Pending or Threatened. Except for any litigation, arbitration or administrative proceedings disclosed in the Guarantor SEC Filings, no litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency, is pending or, to the Borrower's and/or the Guarantor's knowledge, threatened in writing against the Borrower or the Guarantor which could reasonably be expected to have a Material Adverse Effect.

7.6 Non-conflict With Other Obligations. The entry into and performance by the Borrower and/or the Guarantor of the Loan Documentation to which it is a party, and the consummation by them of the transactions contemplated thereby, do not and will not conflict with or result in a breach of, as the case may be:

- (a) any law or regulation applicable to it;
- (b) its constitutional documents;
- (c) any material agreement or instrument binding upon it or any of its assets; and
- (d) any of its borrowing limits or powers or any power exercisable by its directors in connection therewith;

except, in each case where such conflict or breach would not reasonably be expected to have a Material Adverse Effect.

7.7 No Default. No Event of Default is continuing or would reasonably be expected to result from the making of the Loan.

7.8 No Unpaid Taxes. Each of the Borrower or the Guarantor has, to the extent required by Applicable Law, timely filed all material tax returns that are required to have been filed by it and has paid all material taxes, fees and other charges properly imposed on it by any relevant governmental authority, except such taxes, fees or other charges that are being contested in good faith by appropriate proceedings and for which adequate reserves are maintained on the Borrower's and/or Guarantor's books to the extent required by U.S. GAAP.

7.9 No Winding-up. Each of the Borrower and the Guarantor has not taken any corporate action, nor have any other steps been taken or legal proceedings been started or threatened in writing against it, for its winding-up, dissolution or administration or for the appointment of a receiver, administrator, administrative receiver, trustee or similar offices of it or of any or all of its assets or revenues.

7.10 Ownership of the Shares. Subject to the completion of the transfer of the Shares pursuant to the Share Purchase Agreement, each Pledgor is the record and beneficial owner of the Shares held by it, which are free and clear of any lien, security interest, charge, encumbrance or claim (other than Permitted Liens) and each Pledgor has the power and capacity to execute, deliver and perform the Loan Documentation to which it is a party and to create the Pledge in favor of the Lender; provided that neither the Borrower, the Guarantor nor any Pledgor shall be responsible for any defect in title of the Shares that results, directly or indirectly, from a bankruptcy or other insolvency with respect to any of Qimonda or its Affiliates.

7.11 Effective Pledge. The provisions of the Pledge Agreement and registration of the Pledge with the TDCC will be effective to create in favor of the Lender a valid, binding and enforceable security interest in all of each Pledgor's right, title and interest of the Collateral, and constitute a fully perfected first priority pledge in all right, title and interest of such Pledgor in such collateral, superior in right to any liens which any third Person may have against such collateral or interests therein; provided that neither the Borrower, the Guarantor nor any Pledgor shall be responsible for any defect with respect to the Pledge that results, directly or indirectly, from a bankruptcy or other insolvency with respect to any of Qimonda or its Affiliates.

8. COVENANTS.

So long as any amount under the Loan Documentation is outstanding, the Borrower and the Guarantor hereby jointly and severally agree to:

8.1 Authorizations. Obtain when required, make and keep in full force and effect all authorizations from and registrations with any Governmental Entity and other Persons that may be required to enable the Borrower and the Guarantor to own their respective assets and carry on their respective business from time to time being conducted, except where the failure to so obtain or keep in effect would not materially impair such party's ability to perform such party's obligations under the Loan Documentation to which such party is a party, and to perform their respective obligations under any Loan Documentation to which the Borrower or the Guarantor, as applicable, is a party and to ensure the legality, validity, and enforceability of such Loan Documentation.

8.2 Necessary Acts. Upon request by the Lender, do or procure the doing of all such acts and execute or procure the execution of all such documents as the Lender may reasonably consider necessary for giving full effect to the Loan Documentation or securing to the Lender the full benefits of all rights, powers and remedies conferred upon the Lender in the Loan Documentation.

8.3 Financial Statements and Other Information. With respect to the Guarantor, deliver to the Lender the following in English: (a) copies of the Guarantor's Annual Report on Form 10-K and Quarterly Report on Form 10-Q promptly after any such report is filed by the Guarantor with the United States Securities and Exchange Commission; and (b) copies of all documents or other information sent by the Guarantor to its stockholders generally. All financial statements delivered by the Guarantor pursuant to this Section 8.3 shall be prepared under U.S. GAAP. Any report, document or information contemplated by the foregoing sentence that is

available on the U.S. Securities and Exchange Commission's website shall be deemed to have been delivered by the Guarantor to the Lender.

8.4 Notification of Defaults. Promptly notify the Lender upon the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, the Treasurer or General Counsel of the Guarantor obtaining knowledge of the occurrence of any default or Event of Default hereunder or of any default under the Pledge Agreement or the U.S.\$85 million loan agreement between the Guarantor and the Company.

8.5 Inspection. Grant the Lender, its representatives, agents and/or advisors, the right to reasonable access to inspect the facilities and books of the Borrower and the Guarantor. Notwithstanding anything to the contrary in this Agreement, neither the Borrower nor the Guarantor will be required to disclose, permit the inspection or examination of, any document, information or other matter that (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Lender (or its designated representative) is then prohibited by Applicable Law or any agreement binding on the Borrower, the Guarantor or any of their Subsidiaries or (iii) is subject to attorney-client or similar privilege or constitutes attorney work product.

8.6 Compliance with Laws. Procure that each of the Borrower and the Guarantor shall comply in all material respects with all laws to which such party may be subject, if failure so to comply would materially impair such party's ability to perform such party's obligations under the Loan Documentation to which such party is a party.

8.7 Environmental Compliance. Comply in all material respects with all applicable environmental laws, obtain and maintain any environmental permits necessary to the Borrower's or the Guarantor's business and take all reasonable steps in anticipation of known or expected future changes to or obligations under environmental law or any environmental permits, in each case where the failure to do so could reasonably be expected to have a Material Adverse Effect.

8.8 Taxes. Pay and discharge all material taxes, assessments and governmental charges or levies whatsoever imposed on the Borrower or the Guarantor or on its income or profits or on any of the property of the Borrower or the Guarantor prior to the date on which penalties attach thereto, and timely file all returns relating thereto, except to the extent that any such tax, assessment, governmental charge, levy or claim is being contested in good faith and by appropriate proceedings and for which adequate segregated reserves have been established therefore to the extent required by U.S. GAAP or where the failure to so pay, discharge or file would not materially impair such party's ability to perform such party's obligations under the Loan Documentation to which such party is a party.

8.9 Maintenance of Insurance. Maintain or procure to be maintained with reputable insurers insurances on and in relation to its business and assets:

- (a) against those risks customarily insured against by prudent companies carrying on a similar business; and

- (b) against those risks required by Applicable Law.

8.10 Maintenance of Property. Procure that each of the Borrower and the Guarantor will maintain and preserve in good working order (ordinary wear and tear excepted) all of the assets necessary to the conduct of its business from time to time, except where the failure to do so would not materially impair such party's ability to perform such party's obligations under the Loan Documentation to which such party is a party.

9. EVENTS OF DEFAULT.

9.1 Events of Default. The occurrence and continuance of any of the following shall constitute an **Event of Default** under this Agreement:

(a) the Borrower's or Guarantor's failure to make any payment of principal, interest or any other amount payable hereunder when due under the Loan Documentation and such failure continues unremedied for three (3) Business Days in the case of payments of principal or five (5) Business Days in the case of interest or any such other amount;

(b) the Borrower's or Guarantor's failure to duly and punctually perform its material obligations or covenants under the Loan Documentation and such failure continues for 30 days after the Lender provides written notice thereof to the Borrower and the Guarantor;

(c) any representation, warranty or statement made or deemed to be made by the Borrower or the Guarantor in the Loan Documentation is or proves to have been incorrect or misleading in any material respect when made;

(d) the filing of a petition by or against the Borrower or the Guarantor under any provision of any law relating to bankruptcy, insolvency or other relief for debtors; and in the case of any such petition filed against the Borrower or the Guarantor, such petition remains unstayed or undismissed for a period of sixty (60) days; or appointment of a receiver, trustee, custodian or liquidator of or for all or any part of the assets or property of the Borrower or the Guarantor; or the insolvency of the Borrower or the Guarantor; or the making of a general assignment for the benefit of creditors by the Borrower or the Guarantor;

(e) any Loan Documentation, once executed and delivered, ceases to be in full force and effect or ceases to be effective to create the security interest; and

(f) any actual or asserted invalidity or unenforceability by the Borrower or the Guarantor of the Guarantee or the Pledge.

9.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, the Lender, at its option, may: (i) by notice to the Borrower and the Guarantor, declare the unpaid principal amount of the Loan, all interest accrued and unpaid thereon and all other amounts payable hereunder to be immediately due and payable, whereupon the unpaid principal amount of the Loan, all such interest and all such other amounts shall become immediately due and payable, without presentment, demand, protest or further notice of any kind, provided that if an event described in Section 9.1(d) above shall occur without the giving of any such notice and

(ii) upon the acceleration of the Loan, exercise its rights and remedies under the Pledge Agreement.

9.3 Costs. The Borrower and the Guarantor agree to pay on demand all of the losses, costs and expenses (including reasonable attorneys' fees and disbursements) that the Lender incurs in connection with enforcement of the Loan Documentation, the protection or preservation of the Lender's rights under the Loan Documentation or collection of amounts due under the Loan Documentation, whether by judicial proceeding or otherwise. Such costs and expenses include those incurred in connection with any refinancing, or any bankruptcy, insolvency, liquidation or similar proceedings.

9.4 Waivers. Except as otherwise set forth herein or in the Loan Documentation, the Borrower and the Guarantor hereby waive diligence, demand, presentment, protest or notice of any kind in connection with the exercise by the Lender of its rights under the Loan Documentation. The Borrower and the Guarantor agree to make all payments under the Loan Documentation without setoff (except as may be requested by the Lender) or deduction and regardless of any counterclaim or defense.

9.5 [***] Notwithstanding anything to the contrary contained in the Loan Documentation, the Borrower, the Guarantor and the Lender acknowledge that if the Borrower, the Guarantor and/or Micron Technology Asia Pacific is required [***] shall not give rise to a basis for a claim of breach of a representation, non-compliance or default or Event of Default under the Loan Documentation. If [***] occurs, neither the Borrower nor the Guarantor nor Micron Technology Asia Pacific shall have an obligation to provide any additional collateral to the Lender and Lender's interest in the Shares shall be limited to the interest, if any, the Borrower or Micron Technology Asia Pacific has in the Shares as a result of [***].

10. GENERAL PROVISIONS.

10.1 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) confirmed delivery by a standard overnight or recognized international 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):

(a) if to Borrower, to:

Micron Semiconductor B.V.
8000 South Federal Way
Boise, Idaho 83716-9632
Fax: (208) 363-1309
Attention: General Counsel

With a copy to:

Micron Technology, Inc.
8000 South Federal Way
Boise, Idaho 83716-9632
Fax: (208) 368-4095
Attention: Treasurer

With a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, California 94304
Fax: (650) 493-6811
Attention: John A. Fore, Esq.

(b) if to Guarantor, to:

Micron Technology, Inc.
8000 South Federal Way
Boise, Idaho 83716-9632
Fax: (208) 363-1309
Attention: General Counsel

With a copy to:

Micron Technology, Inc.
8000 South Federal Way
Boise, Idaho 83716-9632
Fax: (208) 368-4095
Attention: Treasurer

With a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, California 94304
Fax: (650) 493-6811
Attention: John A. Fore, Esq.

(c) if to Lender, to:

Nan Ya Plastics Corporation
3F, 201 Tun Hua N. Road
Taipei 105, Taiwan, ROC
Fax: 886.2.27178533
Attention: President Office

With a copy (which shall not constitute notice) to:

Nanya Technology Corporation
Hwa-Ya Technology Park 669

10.2 Waiver. The failure at any time of a party hereto to require performance by the other party or parties of any responsibility or obligation required by this Agreement shall in no way affect the first party's right to require such performance at any time thereafter, nor shall the waiver by a party hereto of a breach of any provision of this Agreement by the other party or parties 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 or any right or obligation hereunder, is not assignable, delegable or otherwise transferable by any party, either voluntarily, by operation of law, or otherwise, without the prior written consent of the other parties (which consent may be withheld in its sole discretion); provided that the Lender may assign its rights and obligations hereunder as contemplated by Section 2.2; provided further that after the repayment in full of the U.S.\$85 million loan to the Company from the Borrower, the Lender may, by sending a written notice to the Borrower and the Guarantor at least three (3) Business Days prior to the effective date of any such assignment, assign any or all of its rights to payment of the Loan from the Borrower and/or the Guarantor hereunder to NTC when the Borrower or the Guarantor's payment obligations under the Loan Documentation is due. Upon the assignment to NTC, NTC shall have the right to offset its payment obligations payable under the TTLA against any right or claim so assigned to NTC; provided that NTC may make any such offset only with respect to amounts that are past due under the Loan Documentation. Any such purported assignment or transfer not in accordance with this Section 10.3 shall be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their successors and assigns. The transfer of any right or obligation hereunder by the Lender shall be effected only by the surrender of the Loan, and either the reissuance by the Lender of the Loan to a new borrower or the issuance by the Lender of a new loan instrument to a new borrower; provided that, in the event of an assignment contemplated by Section 2.2, the parties shall execute the Novation Agreement and, if requested by the Borrower, reexecute this Loan Agreement with the only changes being substituting the New Lender and extending the Maturity Date. The Lender represents to the Borrower that, except as otherwise permitted by this Section 10.3, it is and will remain the holder of the Loan. This provision is intended to satisfy the requirements of Section 881(c) (2) of the Internal Revenue Code and Section 1.871-14 of the Treasury Regulations.

10.4 Term. The term of the Agreement shall commence from the date hereof and end on the date upon which all the Borrower's and the Guarantor's obligations and liabilities under the Loan Documentation, including, without limitation, the repayments of the Loan and the interest, have been duly performed (the "**Term**").

10.5 Amendment. This Agreement may not be amended or modified without the written consent of all parties hereto.

10.6 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 NTC, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

10.7 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.

10.8 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 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.

10.9 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.

10.10 Entire Agreement. This Agreement, together with the Exhibits hereto and the agreements and instruments referred to herein, constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, among the parties hereto with respect to the subject matter hereof.

10.11 Taxes. Except as otherwise set forth in this Agreement, all Taxes incurred or imposed in connection with this Agreement and the transactions contemplated hereby shall be paid by the party subject to such Tax.

10.12 Cost and Expenses. The Borrower and Guarantor agree to pay promptly on demand the expenses and fees incurred by the Lender that are charged by the securities agent of the Lender in connection with the creation and perfection of the Pledge; provided, however, that neither the Borrower nor the Guarantor shall be liable for any expense or fees associated with the creation and perfection of a pledge on the Collateral in favor of the New Lender. Except as otherwise set forth herein or in the Loan Documentation, the Borrower and the Lender shall be responsible for their own out-of-pocket expenses incurred by them in the preparation, negotiation and performance of the Loan Documentation (including, but not limited to, legal fees and service fees to professional advisors).

10.13 Lender Representation and Covenant. The Lender hereby represents and warrants that it is not a ten percent (10%) shareholder (as that term is defined in Section 871(h)(3)(B) of the Internal Revenue Code) of the Guarantor on the Agreement date and hereby

agrees that it will not become a ten percent (10%) shareholder of the Guarantor during the Term of the Loan.

10.14 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.

10.15 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.

10.16 Confidential Information.

(a) The parties hereby acknowledge that the terms and conditions of the Loan Documentation and the information requested to be disclosed herein which is not available to the public shall be considered confidential information (collectively, the “**Confidential Information**”), and the parties agree that the term Confidential Information includes (i) on the part of the Borrower and the Guarantor, any information received from the Lender or NTC under, pursuant to or in connection with the Loan Documentation or the transactions contemplated thereby, and (ii) on the part of the Lender, any information received from the Borrower, the Guarantor or Micron Technology Asia Pacific under, pursuant to or in connection with the Loan Documentation or the transactions contemplated thereby. The parties shall not disclose any Confidential Information to any third party except in accordance with the provisions of this Section 10.16. Notwithstanding the foregoing, the term "Confidential Information" shall not include information that (i) is or becomes published or otherwise generally available to the public through no fault or omission of the applicable party or any of its Affiliates, employees, lenders, accountants or attorneys, (ii) was available to the applicable party on a non-confidential basis prior to its disclosure to such party pursuant to the Loan Documentation or (iii) becomes available to the applicable on a non-confidential basis from a source other than the other parties.

(b) Notwithstanding the foregoing, any of the parties may disclose any of the Confidential Information to its Affiliates, employees, lenders, accountants and attorneys, in each case only where such Persons have the need to know and so long as such Persons agree to keep the information confidential in accordance with this Section 10.16.

(c) In the event that any of the parties is requested or becomes legally compelled (including without limitation, including by the Securities and Futures Bureau, Financial Supervisory Commission, Executive Yuan, ROC, the Taiwan Stock Exchange or the U.S. Securities Exchange Commission) to disclose the Confidential Information, such party,

shall provide the other parties with prompt written notice of that fact before such disclosure is made and furnish for disclosure only that portion of the information which is legally required.

(d) Each of the Lender, the Borrower and the Guarantor agrees that it will provide the other parties with drafts of any documents, press releases or other filings in which it is required to disclose the Confidential Information at least five (5) business days or such other period as required by law, whichever is shorter, prior to the filing or disclosure thereof, and that it will make any changes to such materials reasonably requested by the other parties to the extent permitted by Applicable Law. If confidential treatment is requested by any of the other parties, the party seeking disclosure of the Confidential Information agrees to file a request on behalf of such other party and shall use its commercially reasonable efforts in responding to any comments by any such stock exchange or securities regulatory body or authority to cause such confidential treatment to be granted.

(e) Notwithstanding Section 10.4 provides otherwise, the obligations of this Section 10.16 with respect to any Confidential Information or with respect to any discussions or agreements between the parties shall survive and continue for five (5) years from the date of this Agreement.

(f) The Lender understands and agrees that the Guarantor will file the Loan Documentation, as well as a summary of the Loan Documentation, with the U.S. Securities and Exchange Commission (or any other Governmental Entity or regulatory body or stock exchange) and such filings will not be subject to the restrictions and procedures set forth in this Section 10.16.

[Signature Page Follows]

The parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

MICRON TECHNOLOGY, INC.

By: /s/ D. Mark Durcan
Name: D. Mark Durcan
Title: President and Chief Operating Officer

[SIGNATURE PAGE TO LOAN AGREEMENT BETWEEN MICRON TECHNOLOGY INC., MICRON SEMICONDUCTOR B.V. AND NAN YA PLASTICS CORPORATION]

The parties hereto have caused this Agreement to be 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/ S. Boermans / /s/ A.M.L. Kuijpers
Name: S. Boermans / A.M.L. Kuijpers
Title: Trust International Management (T.I.M.) B.V.

[SIGNATURE PAGE TO LOAN AGREEMENT BETWEEN MICRON TECHNOLOGY INC., MICRON SEMICONDUCTOR B.V. AND NAN YA PLASTICS CORPORATION]

The parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

NAN YA PLASTICS CORPORATION

By: /s/ C. J. Wu
Name: C. J. Wu
Title: Chairman

[SIGNATURE PAGE TO LOAN AGREEMENT BETWEEN MICRON TECHNOLOGY INC., MICRON SEMICONDUCTOR B.V. AND NAN YA PLASTICS CORPORATION]

LOAN AGREEMENT

This Loan Agreement (as amended, restated, modified or otherwise supplemented from time to time, this “**Agreement**”) is entered into as of November 26, 2008 (the “**Agreement Date**”), by and between **Micron Technology, Inc.**, a corporation organized under the laws of the State of Delaware, U.S.A. (the “**Borrower**”), and **Inotera Memories, Inc.**, a company incorporated under the laws of the Republic of China (the “**Lender**”).

RECITALS

A. WHEREAS, the Lender has committed to provide financing to the Borrower for general corporate purposes per a Commitment Letter dated October 11, 2008 (such letter along with any supplement thereto, the “**Commitment Letter**”).

B. WHEREAS, to fulfill the Lender’s obligations under the Commitment Letter, the Lender hereby agrees, subject to the terms and conditions set forth herein, to extend a short-term loan facility to the Borrower and the Borrower hereby agrees to borrow the same from the Lender, subject to the terms and conditions set forth herein.

C. WHEREAS, as a condition set forth in the Commitment Letter, the consummation of the 2nd Closing (as defined below) under the Share Purchase Agreement (as defined below) is a condition precedent to the Lender’s performance of its obligation of extending the Loan (as defined below).

D. WHEREAS, the Lender shall, subject to the terms of this Agreement, be and remain the holder of the Loan and agrees that the Loan is intended to satisfy the requirements of Section 881(c)(2) of the Internal Revenue Code and Section 1.871-14 of the Treasury Regulations.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. DEFINITIONS.**1.1 Defined Terms.**

“**Account Receivable**” means all present and future rights, title, remedies and claims which the Borrower has or may have from time to time with respect to the quarterly license fees set forth on Schedule 4 to the TTLA that become due after the Agreement Date.

“**Agreement**” shall have the meaning set forth in the preamble of this Agreement.

“**Agreement Date**” shall have the meaning set forth in the preamble of 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.

“**Borrower**” shall have the meaning set forth in the preamble of this Agreement.

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

“**Confidential Information**” shall have the meaning set forth in Section 10.14(a) of this Agreement.

“**Commitment Letter**” shall have the meaning set forth in the Recitals to this Agreement.

“**Control**” (whether or not capitalized) 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.

“**Drawdown Date**” means the date on which the Lender transfers the proceeds of the Loan to the Borrower.

“**Event of Default**” means any of the events described in Section 9.1 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.

“**Internal Revenue Code**” means the Internal Revenue Code of 1986, as amended, and the rules and regulations promulgated thereunder.

“**Interest Period**” means three (3) months.

“**Lender**” shall have the meaning set forth in the preamble of this Agreement.

“**Loan**” shall have the meaning set forth in Section 2.1(a) of this Agreement.

“**Loan Documentation**” means this Agreement and the Pledge Agreement.

“**Month**” means a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month, except that:

(a) subject to paragraph (c) below, if the numerically corresponding day is not a Business Day, that period shall end on the next Business Day in that calendar month in which that period is to end if there is one, or if there is not, on the immediately preceding Business Day;

(b) if there is no numerically corresponding day in the calendar month in which that period is to end, that period shall end on the last Business Day in that calendar month; and

(c) if an Interest Period begins on the last Business Day of a calendar month, that Interest Period shall end on the last Business Day in the calendar month in which that Interest Period is to end.

The above rules will apply only to the last Month of any period.

“**NTC**” means Nanya Technology Corporation, a company incorporated under the laws of the ROC.

“**Permitted Liens**” means (a) liens for taxes not yet delinquent or liens for taxes being contested in good faith and by appropriate proceedings for which adequate reserves have been established to the extent required by U.S. GAAP; (b) liens in respect of property or assets imposed by law which were incurred in the ordinary course of business, which are not delinquent or remain payable without penalty or which are being contested in good faith and by appropriate proceedings; and (c) liens in favor of the Lender; provided that, in the case of a lien described in the foregoing clause (a) or (b), such lien does not have priority over the liens granted to the Lender under the Pledge 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.

“**Pledge**” shall have the meaning set forth in Section 5.1 of this Agreement.

“**Pledge Agreement**” shall have the meaning set forth in Section 5.1 of this Agreement.

“**Pledged Account Receivable**” shall have the meaning set forth in Section 5.1 of this Agreement.

“**Potential Event of Default**” means any event or circumstance that with the giving of notice or the passage of time (or both) would constitute an Event of Default.

“**ROC**” means the Republic of China.

“**Share Purchase Agreement**” means the Share Purchase Agreement, dated October 11, 2008, entered into by and among the Borrower, the Micron Semiconductor B.V., Qimonda AG and Qimonda Holding B.V. for the sale and purchase of certain shares in the Lender.

“**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**” includes any tax, levy, duty, charge, impost, fee, deduction or withholding of any nature now or hereafter imposed, levied, collected, withheld or assessed by any taxing or other authority and includes any interest, penalty or other charge payable or claimed in respect thereof.

“**Term**” shall have the meaning set forth in Section 10.4 of this Agreement.

“**TTLA**” means the Technology Transfer and License Agreement for 68-50NM Process Nodes, made and entered into as of April 21, 2008, by and between the Borrower and NTC, as amended, amended and restated, modified or otherwise supplemented from time to time.

“**2nd Closing**” shall have the meaning set forth in Section 2.4 of the Share Purchase Agreement.

1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (i) all references to Sections, Articles or Exhibits are to Sections, Articles or Exhibits 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 ROC 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 party hereto 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.

2. **TERMS OF LOAN AND REPAYMENT.**

2.1 Provision of Loan.

(a) Subject to the terms and conditions of this Agreement, immediately following the 2nd Closing, the Lender shall make available a loan facility to the Borrower and the Borrower agrees to borrow in the principal amount of eighty five million U.S. dollars (\$85,000,000) (the “**Loan**”).

(b) Subject to the Borrower's satisfaction or the Lender's waiver of the conditions set forth in Section 2.1(c) and Article 6 of this Agreement, the Lender shall make the entire principal amount of the Loan available to the Borrower on the Drawdown Date (which shall be a Business Day) by wire transfer to the account designated by the Borrower in a written drawing notice in form substantially as Exhibit A hereto.

(c) Conditions of Drawing. The drawing of the Loan is also subject to the following conditions:

(i) Delivery of a drawing notice is made by the Borrower not later than 12:00 noon (Taipei time) on second (2nd) Business Day before the scheduled Drawdown Date (or at such time as the Lender may approve); and

(ii) On or prior to the Drawdown Date, the Lender shall have received the evidence of consummation of the 2nd Closing.

2.2 Maturity of the Loan. The Borrower shall repay the Loan in full on the last day of the period of six (6) months commencing from the Drawdown Date, unless the Loan is accelerated pursuant to this Agreement.

2.3 Use of Proceeds. All proceeds of the Loan shall be used for general corporate purposes.

2.4 Repayment Mechanics. All repayments hereunder shall be made by wire transfer of such amounts in immediately available funds denominated in U.S. dollars to the Lender, at such place and to such account as the Lender shall designate in a written notice to the Borrower. Payments shall be credited first to costs and expenses due and payable hereunder (including the costs incurred under Sections 9.3), then to the accrued interest then due and payable and the remainder applied to principal. The Loan may be prepaid, without penalty or premium, in whole or in part from time to time, provided that:

(a) Notice: the Borrower shall have given the Lender not less than three (3) Business Days' (or such shorter period as may be agreed between the Borrower and the Lender) prior written notice specifying the amount to be prepaid and the date of prepayment; and

(b) Interest: the Borrower shall concurrently pay accrued and unpaid interest on the full amount of the Loan to be prepaid on the date of such prepayment.

2.5 Taxes. (a) All payments to be made by the Borrower to the Lender under the Loan Documentation shall be made free and clear of any deduction or withholding on account of any Taxes. If the Borrower or any other person is required by any law or regulation to make any such deduction or withholding, the Borrower shall (i) pay such deducted or withheld amount to the applicable tax authorities and, promptly upon the Lender's request, deliver to the Lender the certificate or receipt evidencing such payment and (ii) pay such additional amount as will ensure that the Lender receives and is entitled to retain, free and clear of any such deduction or withholding, the full amount which it would have received if no such deduction or withholding had been required. Without limiting the foregoing, if the Lender or any other person on the Lender's behalf is required by any law or regulation to make a payment on account of any such withholding Tax or incurs any liability in respect thereof, the Borrower shall, within ten (10) Business Days after demand by the Lender (which demand shall provide a calculation in reasonable detail of such payment), indemnify the Lender against such payment or liability and any interest, penalty or expense payable or incurred in connection therewith. The obligations of the Borrower under this Section 2.5(a) are subject to (i) the Lender executing any applicable tax withholding forms (Form W-8BEN or its equivalent or any other form prescribed by law as a basis for claiming exemption from or reduction in withholding tax) as reasonably requested by the Borrower or the United States Internal Revenue Service for United States taxation purposes,

together with such supplementary documentation necessary to allow the Borrower to determine whether the withholding or deduction is required to be made and (ii) the representation and covenant contemplated by Section 10.13 being true and complied with. The Lender agrees to use its commercially reasonable efforts, at the cost and expense of the Borrower, to otherwise assist the Borrower to obtain the exemption status for any such deduction or withholding. Nothing in this Section 2.5 shall require the Borrower to make any payment on or indemnify the Lender for any Taxes imposed on or measured by the Lender's overall net income (however denominated) and franchise Taxes imposed on the Lender under applicable ROC laws.

(b) If the Lender determines that it has received a refund of, or reduction in its liability for, any Taxes as a result of amounts paid or withheld by the Borrower pursuant to this Section 2.5, the Lender shall pay over such refund or reduction to the Borrower (but only to the extent of the amounts paid or withheld by the Borrower under this Section 2.5 with respect to the Taxes giving rise to such refund or reduction), net of all out-of-pocket expenses of the Lender and without interest (other than any interest paid by the relevant governmental authority with respect to such refund or reduction), provided that the Borrower, upon the request of the Lender, agrees to repay the amount paid over to the Borrower to the Lender in the event the Lender is required to repay such refund or reduction to such Governmental Entity. This Section 2.5 shall not be construed to require the Lender to make available its tax returns (or any other information relating to its Taxes that it deems confidential) to the Borrower or any other person.

3. INTEREST

3.1 Calculation of Interest. The rate of interest on the Loan for each Interest Period shall be the percentage rate per annum, which is the aggregate of the applicable three-month LIBOR and a margin of two percent (2%), rounded up to the nearest fourth decimal point. For the purpose of this Section 3.1, LIBOR shall mean (a) the British Bankers' Association's London Interbank Offered Rate for U.S. dollars for a tenor equal to (or most comparable to) the Interest Period displayed on the Reuters Screen Page 3750 at 11:00 a.m. (Taipei time) on the date which is two (2) Business Days prior to the commencement of the applicable Interest Period or (b) if the rate specified in clause (a) is not available for any reason, the offer rate for U.S. dollars for a tenor equal to (or most comparable to) the Interest Period displayed on Reuters Screen Page TAIFX3 at 11:00 a.m. (Taipei time) on the date which is two (2) Business Days prior to the commencement of the applicable Interest Period.

3.2 Interest Period. The initial Interest Period shall commence on the Drawdown Date, with each successive Interest Period commencing on the last day of the prior Interest Period.

3.3 Payment of Interest. The Borrower shall pay accrued interest in arrears on the Loan on the last day of each Interest Period, and the amount of interest shall be computed on the basis of the actual number of days elapsed (including the first day but excluding the last day of such Interest Period) and a year of three hundred and sixty (360) days.

3.4 Past Due Rate. If the Borrower fails to pay any amount payable by it under the Loan on its due date, past due interest shall accrue on such unpaid amount at the rate of 10% per annum from the due date up to the date of actual payment of the unpaid amount (both before and after

judgment). The Borrower shall pay past due interest (if unpaid) accruing on an unpaid sum at the end of each Interest Period applicable to that unpaid sum or on demand of the Lender.

4. RESERVED

5. PLEDGE AND SECURITY INTEREST.

5.1 Pledge of the Account Receivable. Without prejudice to the Lender’s right toward the Borrower under this Agreement, as security for the performance in full of the obligations of the Borrower under this Agreement, the Borrower and the Lender shall enter into an account receivable pledge agreement in the form and substance attached hereto as Exhibit B (the “**Pledge Agreement**”) and the Borrower shall create a first priority security interest, subject to Permitted Liens, of a pledge in favor of the Lender (the “**Pledge**”), in the rights, title and interests in and to (i) all of the Account Receivable, and (ii) all rights and privileges of the Borrower with respect to the Account Receivable, all proceeds, income and profits thereof and all property received in addition thereto, in exchange or substitution therefore (items (i) and (ii) collectively, the “**Pledged Account Receivable**”).

6. CONDITIONS PRECEDENT.

The Lender shall only be obligated to provide the Loan when each of the following conditions has been satisfied:

(a) The Lender shall have received this Agreement duly executed and delivered by the Borrower.

(b) All representations and warranties made by the Borrower in this Agreement shall be true and correct in all material respects with reference to the facts and circumstances then subsisting.

(c) The Lender shall have received the Pledge Agreement, duly executed and delivered by the Borrower, granting to the Lender, for its benefit, a security interest in the Pledged Account Receivable described therein together with such financing and assignment documents as provided in the Pledge Agreement and evidence satisfactory to the Lender with respect to the Lender’s first priority security interest in the Pledged Account Receivable.

(d) The Lender shall have received certified copies of all action taken by the Borrower authorizing the execution, delivery and performance of the Loan Documentation.

(e) Completion of creation and perfection of the Pledge, which shall be evidenced by any notices and acknowledgements required to perfect or give effect to the security created under the Loan Documentation, including, but not limited to, the written notification issued by the Borrower to NTC and the written acknowledgment issued by NTC, both in the form as set out in the Pledge Agreement.

(f) No Event of Default or Potential Event of Default shall have occurred and be continuing.

(g) The requirements set out in Section 2.1(b) and (c) are fully complied with.

7. REPRESENTATIONS AND WARRANTIES.

The Borrower represents and warrants to the Lender that each of the representations, warranties and statements contained in the following Sections of this Article 7 is true and correct as of the Agreement Date.

7.1 Organization; Good Standing and Qualification. The Borrower is a corporation duly incorporated and validly existing under the laws of the State of Delaware. The Borrower has all requisite corporate power and authority to own, lease and operate its properties and assets that it currently owns, leases or operates and to carry on its business as now conducted and as presently proposed to be conducted.

7.2 Authorization. All corporate action on the part of the Borrower, its officers, directors and stockholders necessary for the authorization, execution and delivery of the Loan Documentation and the performance of all obligations of the Borrower hereunder has been taken. Each of the Loan Documentation constitutes a valid and legally binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms, except to the extent that the enforceability thereof may be limited by applicable bankruptcy, insolvency, moratorium, and other laws affecting creditor's rights generally and by equitable principles (regardless of whether enforcement is sought in equity or at law).

7.3 Governmental Consents. Other than (a) foreign investment approval from the Investment Commission of the ROC Ministry of Economic Affairs and (b) anti-competition approvals under Applicable Law, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Entity on the part of the Borrower is required in connection with the consummation of the transactions contemplated by the Loan Documentation except as have been made or obtained (it being understood that no representation or warranty is being made as to any such consents, approvals, orders, authorizations, registrations, qualifications, designations or filings which may be required in connection with the exercise by Lender of any of its rights and remedies against the Collateral).

7.4 Ownership of the Account Receivable. The Borrower is the sole legal and beneficial owner of the Account Receivable, which is free and clear of any set-off, lien, security interest, charge, encumbrance or claim, other than Permitted Liens, and the Borrower has the corporate power and capacity to execute, deliver and perform the Loan Documentation and to create the Pledge in favor of the Lender.

7.5 Effective Pledge. The implementation of provision of Article 5 of this Agreement and provisions of the Pledge Agreement and the delivery of requisite notices to NTC will be effective to create in favor of the Lender a valid, binding and enforceable security interest in all of the Borrower's rights, title and interests in the Pledged Account Receivable, and constitute a fully perfected first and prior security interest, lien, in all right, title and interest of the Borrower in such collateral, superior in right to any liens which any third Person may have against such collateral or interests therein.

8. COVENANTS.

So long as any amount under the Loan Documentation is outstanding, the Borrower hereby agrees to:

8.1 Necessary Acts. Upon request by the Lender, do or procure the doing of all such acts and execute or procure the execution of all such documents as the Lender may reasonably consider necessary for giving full effect to the Loan Documentation or securing to the Lender the full benefits of all rights, powers and remedies conferred upon the Lender in the Loan Documentation.

8.2 Notification of Defaults. Promptly notify the Lender upon the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, the Treasurer or General Counsel of the Borrower obtaining knowledge of the occurrence of any default or Event of Default hereunder.

9. EVENTS OF DEFAULT.

9.1 Events of Default. The occurrence and continuance of any of the following shall constitute an **Event of Default** under this Agreement:

(a) the Borrower's failure to make any payment of principal, interest or any other amount payable hereunder when due under the Loan Documentation and such failure continues unremedied for three (3) Business Days in the case of payments of principal or five (5) Business Days in the case of interest or any such other amount;

(b) the Borrower's failure to perform any of its material obligations or covenants under the Loan Documentation, in the case only of a failure which is capable of remedy and is not to pay money, such failure is not cured within thirty (30) days (or such longer period as the Lender may approve) after receipt of written notice from the Lender requiring it to do so;

(c) any representation, warranty or statement made or deemed to be made by the Borrower in the Loan Documentation is or proves to have been incorrect or misleading in any material respect when made;

(d) the filing of a petition by or against the Borrower under any provision of any law relating to bankruptcy, insolvency or other relief for debtors, and in the case of any such petition filed against the Borrower, such petition remains unstayed or undismissed for a period of 60 days; or appointment of a receiver, trustee, custodian or liquidator of or for all or any part of the assets or property of the Borrower; or the insolvency of the Borrower; or the making of a general assignment for the benefit of creditors by the Borrower; or

(e) any Loan Documentation, once executed and delivered, ceases to be in full force and effect or ceases to be effective to create the security interest; and

(f) any actual or asserted invalidity or unenforceability by the Borrower of the Pledge.

9.2 Remedies. Upon the occurrence and during the continuance of any Event of Default, the Lender, at its option, may: (i) by notice to the Borrower, declare the unpaid principal amount of the Loan, all interest accrued and unpaid thereon and all other amounts payable hereunder to be immediately due and payable, whereupon the unpaid principal amount of the Loan, all such interest and all such other amounts shall become immediately due and payable, without presentment, demand, protest or further notice of any kind, provided that if an event described in Section 9.1(d) above shall occur, without the giving of any such notice, (ii) upon acceleration of the Loan, exercise its rights under the Pledge Agreement, and (iii) upon acceleration of the Loan and other than with respect to the Collateral (as defined in the Pledge Agreement), exercise any or all of the rights and remedies available to the Lender under Applicable Law.

9.3 Costs. The Borrower agrees to pay on demand all of the losses, costs and expenses (including reasonable attorneys' fees and disbursements) that the Lender incurs in connection with enforcement of the Loan Documentation, the protection or preservation of the Lender's rights under the Loan Documentation or collection of amounts due under the Loan Documentation, whether by judicial proceeding or otherwise. Such costs and expenses include those incurred in connection with any refinancing, or any bankruptcy, insolvency, liquidation or similar proceedings.

9.4 Waivers. Except as otherwise set forth herein or in the Loan Documentation, the Borrower hereby waives diligence, demand, presentment, protest or notice of any kind in connection with the Lender exercising its rights and remedies upon the occurrence and during the continuance of an Event of Default. The Borrower agrees to make all payments under the Loan Documentation without setoff (except as may be requested by the Lender) or deduction and regardless of any counterclaim or defense.

10. GENERAL PROVISIONS.

10.1 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) confirmed delivery by a standard overnight or recognized international 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):

(a) if to the Borrower, to:

Micron Technology, Inc.
8000 South Federal Way
Boise, Idaho 83716-9632
Fax: (208) 363-1309
Attention: General Counsel

With a copy to:

Micron Technology, Inc.
8000 South Federal Way

Boise, Idaho 83716-9632
Fax: (208) 368-4095
Attention: Treasurer

With a copy to:

Wilson Sonsini Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, California 94304
Fax: (650) 493-6811
Attention: John A. Fore, Esq.

(b) if to Lender, to:

Inotera Memories Inc.
Hwa-Ya Technology Park
667, Fuhsing 3rd Road
Kueishan, Taoyuan
Taiwan, R.O.C.
Fax: 886-3-327-2988 Ext. 3385
Attention: General Counsel

10.2 Waiver. The failure at any time of a party hereto to require performance by the other party or parties of any responsibility or obligation required by this Agreement shall in no way affect the first party's right to require such performance at any time thereafter, nor shall the waiver by a party hereto of a breach of any provision of this Agreement by the other party or parties 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 or any right or obligation hereunder, is not assignable, delegable or otherwise transferable by any party, either voluntarily, by operation of law, or otherwise, without the prior written consent of the other parties (which consent may be withheld in its sole discretion). Any such purported assignment or transfer not in accordance with this Section 10.3 shall be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties and their successors and assigns. The transfer of any right or obligation hereunder by the Lender shall be effected only by the surrender of the Loan, and either the reissuance by the Lender of the Loan to a new borrower or the issuance by the Lender of a new loan instrument to a new borrower. The Lender represents to the Borrower that, except as otherwise permitted by this Section 10.3, it is and will remain the holder of the Loan. This provision is intended to satisfy the requirements of Section 881(c)(2) of the Internal Revenue Code and Section 1.871-14 of the Treasury Regulations.

10.4 Term. The terms of the Agreement shall commence from the Agreement Date and end on the date upon which all the Borrower's obligations and liabilities under this Agreement have been irrevocably performed or discharged in full (the "**Term**").

10.5 Amendment. This Agreement may not be amended or modified without the written consent of all parties hereto.

10.6 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, any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenant, condition or other provision contained herein.

10.7 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.

10.8 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 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.

10.9 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.

10.10 Entire Agreement. This Agreement, together with the Exhibits hereto and the agreements and instruments referred to herein, constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, among the parties hereto with respect to the subject matter hereof.

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 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.

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.

10.13 Lender Representation and Covenant. The Lender hereby represents and warrants that it is not a ten percent (10%) shareholder (as that term is defined in Section 871(h)(3)(B) of the Internal Revenue Code) of the Borrower on the Agreement Date and hereby agrees that it will not become a ten percent (10%) shareholder during the Term of the Loan.

10.14 Confidential Information.

(a) The parties hereby acknowledge that the terms and conditions of the Loan Documentation and the information requested to be disclosed herein which is not available to the public shall be considered confidential information (collectively, the “**Confidential Information**”), and the parties agree that the term Confidential Information includes (i) on the part of the Borrower, any information received from the Lender under, pursuant to or in connection with the Loan Documentation or the transactions contemplated thereby, and (ii) on the part of the Lender, any information received from the Borrower under, pursuant to or in connection with the Loan Documentation or the transactions contemplated thereby. The parties shall not disclose any Confidential Information to any third party except in accordance with the provisions of this Section 10.14. Notwithstanding the foregoing, the term "Confidential Information" shall not include information that (i) is or becomes published or otherwise generally available to the public through no fault or omission of the applicable party or any of its Affiliates, employees, lenders, accountants or attorneys, (ii) was available to the applicable party on a non-confidential basis prior to its disclosure to such party pursuant to the Loan Documentation or (iii) becomes available to the applicable on a non-confidential basis from a source other than the other parties.

(b) Notwithstanding the foregoing, any of the parties may disclose any of the Confidential Information to its Affiliates, employees, lenders, accountants and attorneys, in each case only where such Persons have the need to know and so long as such Persons agree to keep the information confidential in accordance with this Section 10.14.

(c) In the event that any of the parties is requested or becomes legally compelled (including without limitation, including by the Securities and Futures Bureau, Financial Supervisory Commission, Executive Yuan, ROC, the Taiwan Stock Exchange or the U.S. Securities Exchange Commission) to disclose the Confidential Information, such party, shall provide the other parties with prompt written notice of that fact before such disclosure is made and furnish for disclosure only that portion of the information which is legally required.

(d) Each of the Lender and the Borrower agrees that it will provide the other parties with drafts of any documents, press releases or other filings in which it is required to disclose the Confidential Information at least five (5) business days or such other period as required by law, whichever is shorter, prior to the filing or disclosure thereof, and that it will make any changes to such materials reasonably requested by the other parties to the extent permitted by Applicable Law. If confidential treatment is requested by any of the other parties, the party seeking disclosure of the Confidential Information agrees to file a request on behalf of such other party and shall use its commercially reasonable efforts in responding to any comments by any such stock exchange or securities regulatory body or authority to cause such confidential treatment to be granted.

(e) Notwithstanding Section 10.4 provides otherwise, the obligations of this Section 10.14 with respect to any Confidential Information or with respect to any discussions or agreements between the parties shall survive and continue for five (5) years from the date of this Agreement.

(f) The Lender understands and agrees that the Borrower will file the Loan Documentation, as well as a summary of the Loan Documentation, with the U.S. Securities and

Exchange Commission (or any other Governmental Entity or regulatory body or stock exchange) and such filings will not be subject to the restrictions and procedures set forth in this Section 10.14.

[Signature Page Follows]

The parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

MICRON TECHNOLOGY, INC.

By: /s/ D. Mark Durcan
Name: D. Mark Durcan
Title: President and Chief Operating Officer

[SIGNATURE PAGE TO LOAN AGREEMENT BETWEEN MICRON TECHNOLOGY, INC. AND INOTERA MEMORIES, INC.]

The parties hereto have caused this Agreement to be executed and delivered as of the date first written above.

INOTERA MEMORIES, INC.

By: /s/ Charles Kau
Name: Charles Kau
Title: President

[SIGNATURE PAGE TO LOAN AGREEMENT BETWEEN MICRON TECHNOLOGY, INC. AND INOTERA MEMORIES, INC.]

TRANSITION AGREEMENT

This Transition Agreement (this “Agreement”), dated as of October 11, 2008 (the “Effective Date”), is made by and among Nanya Technology Corporation, a company incorporated under the laws of the Republic of China (“NTC”), Qimonda AG, a company incorporated under the laws of Germany (“Qimonda”), Inotera Memories, Inc., a joint venture company limited by shares under the laws of the Republic of China (the “Company”), Micron Technology, Inc., a company incorporated under the laws of Delaware (“Micron” and, together with NTC, Qimonda and the Company, the “Parties” and each a “Party”). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Share Purchase Agreement (as defined below).

RECITALS

A. The Company was established by NTC and Infineon Technologies AG, a predecessor in interest to Qimonda (“Infineon”), pursuant to that certain Joint Venture Agreement, dated November 13, 2002 (such agreement, as amended by the first through fifth amendments thereto, the Letter of Undertaking dated December 3, 2003 and the Letter of Agreement re Assignment dated July 28, 2006, the “JV Agreement”).

B. In connection with the entry into the JV Agreement and the operation of the Company, NTC, Infineon and the Company entered into certain agreements, including (i) the Joint Product Development and Product Swap Agreement between NTC and Infineon, as predecessor in interest to Qimonda, dated November 17, 2003 (including two Amendments and Letter Agreement re Assignment dated July 31, 2006), (ii) the Technical Information Exchange Agreement between NTC and Qimonda dated September 24, 2007, (iii) the (110nm) License and (90/70 nm) Technical Cooperation Agreement for DRAM Process Technology between NTC and Infineon, as predecessor in interest to Qimonda, dated November 13, 2002 (including fourteen Amendments, two Engineering Sample Agreements and Letter Agreement re Assignment dated July 31, 2006), (iv) the 60nm Technical Cooperation Agreement between NTC and Infineon, as predecessor in interest to Qimonda, for DRAM Process Technology dated September 29, 2005 (including three Amendments of Letter Agreement re Assignment dated July 31, 2006), (v) the Product Purchase and Capacity Reservation Agreement among NTC, Infineon, as predecessor in interest to Qimonda, and the Company dated July 15, 2003 (including three Amendments and one Supplement), (vi) the Know How Transfer Agreement among NTC, Infineon, as predecessor in interest to Qimonda, and the Company initially dated November 13, 2002 (including two Amendments) and (vii) the Service Agreement between NTC and the Company dated July 15, 2003 (the “Ancillary JV Agreements”).

C. In accordance with the terms of the JV Agreement, Infineon assigned all of its rights and, with certain exceptions, its obligations under the JV Agreement and the Ancillary JV Agreements to Qimonda in connection with the transfer by Infineon of all of its shareholdings in the Company to Qimonda.

D. On the date hereof, Qimonda and Micron have entered into a Share Purchase Agreement, to which this Agreement is attached as Exhibit A (the “Share Purchase Agreement”), pursuant to which, subject to the terms and conditions of the Share Purchase Agreement, Qimonda and its Affiliates will be selling to Micron or its nominees all of the issued and outstanding shares of common stock of the Company owned of record by Qimonda and its Affiliates (other than shares held by Qimonda and its Affiliates as foreign institutional investors under applicable ROC law).

E. In connection with and conditioned upon the transfer of the 2nd Close Shares, effective as of the 2nd Closing, the JV Agreement and the Ancillary JV Agreements will terminate, subject to the survival of certain provisions agreed upon by the parties.

F. It is a condition to the 2nd Closing that Micron and NTC will enter into a new joint venture agreement with respect to the Company (the “New JV Agreement”), and that Micron, NTC and/or the Company will enter into certain related agreements and modify certain existing agreements in connection therewith (the “New JV Ancillary Agreements”).

G. On the date hereof, Micron, Micron Semiconductor B.V. and NTC have entered into a Memorandum of Understanding (the “New JV MOU”), which sets forth the current expectations of the parties with respect to principal terms of the New JV Agreement and the New JV Ancillary Agreements.

H. It is a condition to the 1st Closing that the Buyer Parent and the Seller Parent will enter into a cross license agreement mutually agreeable to the parties (the “Patent Cross License”), which shall become effective immediately upon the 2nd Closing;

I. Concurrently with the execution and delivery hereof, and as an inducement for the Parties to enter into this Agreement:

1. Micron and Qimonda have entered into that certain Technology License Agreement, in the form attached to the Share Purchase Agreement as Exhibit B (the “Micron/Qimonda TLA”), which shall become effective immediately upon the later of (A) the 1st Closing and (B) the receipt of the 2nd Close FCO Approval;

2. Infineon and Micron have entered into that certain Technology License Agreement, in the form attached to the Share Purchase Agreement as Exhibit C (the “Infineon/Micron TLA”), which shall become effective immediately upon the later of (A) the 1st Closing and (B) the receipt of the 2nd Close FCO Approval;

3. the Company and Micron have entered into that certain Patent and Technology License Agreement, in the form attached hereto as Exhibit D (the “Company/Micron PTLA”), which shall become effective immediately upon the later of (A) the 1st Closing and (B) the receipt of the 2nd Close FCO Approval;

4. that certain Technology Transfer Agreement for 68-50nm Process Nodes, in the form attached to the Share Purchase Agreement as Exhibit E (the “TTA”), which shall become effective immediately upon the 2nd Closing;

5. NTC and Qimonda have entered into that certain Termination Agreement, in the form attached to the Share Purchase Agreement as Exhibit F (the “NTC/Qimonda Termination Agreement”), dated as of the date hereof, which shall become effective immediately upon the 2nd Closing;

6. NTC, Qimonda and the Company have entered into that certain Release Agreement, in the form attached to the Share Purchase Agreement as Exhibit G (the “Release Agreement”), dated as of the date hereof, which shall become effective upon the 2nd Closing; and

7. Qimonda and the Company have entered into that certain Supply Agreement, in the form attached to the Share Purchase Agreement as Exhibit H (the “Supply Agreement”), which shall become effective immediately upon the 2nd Closing.

J. The Parties desire to provide for certain agreements and undertakings with respect to, among other things, the operation and conduct of the business of the Company from the Effective Date until the 2nd Closing Date, the transition of Qimonda’s share ownership in the Company to Micron pursuant to the Share Purchase Agreement, the implementation of the terms of and the consummation of the transactions contemplated by the Acquisition Total Documents, and the transition to the New JV Agreement and the New JV Ancillary Agreements.

AGREEMENT

In consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound, hereby agree as follows:

1. Agreements and Covenants.

1.1. Access. Between the date of this Agreement and the 2nd Closing Date, NTC and Qimonda shall not vote the shares they hold in the Company or otherwise exert their influence on the Company to prevent the Company from making, and the Company agrees to make, the office, facilities, machinery and equipment, inventories, assets, properties, books of account and records of the Company available at reasonable times and upon reasonable prior notice for examination and inspection by NTC, Qimonda and Micron and their respective representatives, advisors and agents to the extent such access is necessary (i) for purposes of confirmatory due diligence and (ii) as the Company shall have determined is in the best interests of the Company; provided, however, any such Party’s inspections and examinations at the Company’s facility shall not unreasonably disrupt the normal operations of the Company.

1.2. Voting of Shares. Between the date of this Agreement and the 2nd Closing Date, except as expressly contemplated by this Agreement or, in the case of Qimonda, the Share Purchase Agreement, or otherwise agreed to in writing by Micron, neither Qimonda nor NTC shall:

a. vote any Company securities in favor of the amendment of, or otherwise permit the Company to amend, the Company’s Articles of Incorporation;

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b. resolve on any increase in the paid-in capital of the Company;

c. vote to approve or otherwise permit the declaration, setting aside or payment of any dividend or other distribution on or in respect of the Common Stock or other shares of the Company;

d. vote any shares of Company securities in favor of the amendment of any Acquisition Total Document or any agreement listed in Section 3.10 of the Sellers' Disclosure Letter; or

e. enter into any voting agreements or voting trusts, grant any proxies, or otherwise grant or transfer voting rights with respect to any securities of the Company.

1.3. Pre-Closing Covenants. From and after the date hereof and until the 2nd Closing, unless Micron shall have given its prior written consent for the Company to do otherwise, the Company shall not take, and neither NTC nor Qimonda shall exert their influence, through the voting of Company securities or otherwise, to cause the Company to take, any of the following actions (provided, however, that nothing in this Agreement shall require any member of the Board of Directors of the Company to violate his or her duties to the Company under applicable corporate or other Laws):

a. operate the business of the Company other than in the ordinary and usual course of normal day to day operations of such business as conducted prior to the date hereof (the "Ordinary Course of Business") or fail to maintain all of the facilities, assets and properties of the Company in their condition as of the date hereof, normal wear and tear excepted;

b. eliminate or reduce the insurance coverage of the Company's facilities, assets, properties or interests;

c. (i) disrupt the Company's business organizations, (ii) terminate the services of the Company's present employees and other service providers, or (iii) terminate the Company's present relationships with its material vendors, suppliers and customers and other Persons having business relationships with it;

d. (i) solicit, encourage, cooperate with or facilitate (by way of furnishing information or otherwise) any inquiries or proposals (other than the transaction contemplated hereby) for the acquisition of the stock, assets or business of the Company or (ii) acquire any material assets, properties or interests other than in the Ordinary Course of Business;

e. merge or consolidate with any other Person, amend or modify its organizational documents or effect any issuance of securities, stock split, reverse stock split or reclassification;

f. enter into, or become obligated under, any material Contract;

g. terminate or change, amend or otherwise modify any material Contract;

h. take any action to implement, or decide to implement in the future, any material technology or process not in use by the Company on the date hereof;

i. incur or guarantee any indebtedness or suffer or permit the creation of any Lien outside the Ordinary Course of Business upon any facilities, assets, properties or interests of the Company;

j. retain or hire any new senior management employee, increase or otherwise change the rate or nature of compensation and benefits (including wages, salaries and bonuses and benefits under pension profit sharing, deferred compensation and other employee benefit plans and programs) which is paid or payable to any employee of the Company or enter into or amend any employment, consulting or similar Contract, in each case outside the Ordinary Course of Business;

k. release, settle or compromise any material claim, or waive any material right, of the Company or settle or compromise any pending or threatened material claim against the Company; and

l. agree to take any action which would breach or violate any of clauses a. through k. of this Section 1.3.

1.4. Transition Period Assistance. During the period commencing on the Effective Date and concluding on the 2nd Closing Date (the "Transition Period"), NTC, Qimonda and the Company shall provide their full cooperation to ensure an effective and timely transition in preparation for the 2nd Closing.

1.5. Employees. Qimonda agrees to continue to make available to the Company during the Transition Period, any of its employees or former employees seconded to the Company on the same terms and conditions as they are currently made available to the Company in order to permit reasonable replacement and an efficient transition, provided that such employees shall be subject to such reasonable rules and restrictions as may be established by NTC and the

Company. Qimonda shall withdraw all such employees on the 2nd Closing Date. Qimonda shall be responsible for any and all employee benefits, severance and termination costs and expenses relating to the withdrawal of any such employees on the Closing Date.

1.6. Micron Board Seats. NTC, the Company and, prior to the 2nd Closing, Qimonda agree to take all actions as may be necessary, and NTC and, prior to the 2nd Closing, Qimonda shall cause the members of the Board of Directors of the Company appointed by each of them to vote and take such other actions as may be necessary, to call a meeting of the shareholders of the Company to be held as promptly as possible following the anticipated 2nd Closing for purposes of electing the nominees appointed by Micron to the Board of Directors and supervisors of the Company as contemplated by the New JV Agreement, and in the event the 2nd Closing is delayed for any reason beyond such anticipated 2nd Closing, to take such steps as are necessary to postpone or adjourn the meeting from time to time so that it occurs as promptly as possible following the new anticipated 2nd Closing. In the alternative, to the extent necessary to ensure such meeting occurs as promptly as practicable following the 2nd Closing, if reasonably feasible to do so, such meeting shall be called for the purpose of full re-election of all directors of the Board and the supervisors.

1.7. Implementation of Acquisition Total Agreements and New JV Arrangements. The Company, NTC, Micron and, prior to the 2nd Closing, Qimonda agree to take all actions as may be reasonably necessary, and NTC and, prior to the 2nd Closing, Qimonda shall cause the members of the Board of Directors of the Company appointed by each of them to vote and take such other actions as may be reasonably necessary, to implement the terms of and consummate the transactions contemplated by (i) the Acquisition Total Agreements, including the transition to Micron's technology pursuant to the TTA following the 2nd Closing, and (ii) the New JV Agreement and the New JV Ancillary Agreements.

1.8. Supply Agreement. The Company and Qimonda agree that they will not amend or terminate the Supply Agreement, or waive the performance of or fail to enforce any provision thereof, without the prior written consent of Micron.

1.9. Micron Financing Information Assistance. The Company and NTC will use all reasonable efforts to provide to Micron upon request all cooperation reasonably requested by Micron in connection with the arrangement of any financing proposed by Micron in connection with the transactions contemplated by the Share Purchase Agreement, including (i) participation in a reasonable number of meetings, presentations, road shows, due diligence sessions and sessions with rating agencies, (ii) assisting with the preparation of materials for rating agency presentations, offering documents, private placement memoranda, bank information memoranda, prospectuses, business projections and similar documents required in connection with the such financing, and (iii) similar matters.

1.10. Financial Information. The Company will use its reasonable efforts to cooperate with Micron and provide to Micron upon request (x) all financial information necessary for Micron to account for its investment in the 1st Close Shares and the 2nd Close Shares, and (y) any other information and cooperation regarding the Company as Micron shall reasonably request in order to aid in financial statement preparation and the reporting requirements of Micron as a United States reporting company.

1.11. Third Party Consents. From and after the date hereof and prior to the 2nd Closing Date, and in furtherance of the consummation of the transactions contemplated hereby, by each of the other Acquisition Total Documents, the New JV Agreement and the Ancillary JV Agreements, the Company shall use its reasonable efforts to obtain such consents and waivers, to enter into such amendments, and to provide such notices, and each other Party shall provide such cooperation as is reasonably requested by the Company, with respect to (a) the US\$260,000,000 Five-Year Syndicate Term Loan Agreement, dated as of January 14, 2004, by and among the Company, as Borrower, and the other parties thereto, (b) the US\$672,000,000 and NT\$5,700,000,000 Five-Year Syndicate Term Loan Agreement, dated as of October 14, 2004, by and among the Company, as Borrower, and the other parties thereto, (c) US\$400,000,000 and NT\$27,000,000,000 Five-Year Syndicated Term Loan Agreement, dated as of March 5, 2007, by and among the Company, as Borrower, and the other parties thereto, as is reasonably necessary to avoid a default or event of default, or any such incipient or prospective default or event of default, under of any of the foregoing term loan agreements and under any of the Company's outstanding public bonds as a result, directly or indirectly, of such transactions.

1.12. Further Assurances. Subject to the terms and conditions herein provided, each of the Parties hereto agrees to use its reasonable efforts to take or cause to be taken all reasonable action and to do or cause to be done all things reasonably necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement, including executing any additional instruments necessary to consummate the transactions contemplated hereby. If at any time after the date hereof any further reasonable action is necessary to carry out the purposes of this Agreement, the proper officers and directors of each party hereto shall take all such action.

2. Miscellaneous.

2.1. Termination. This Agreement shall terminate automatically in the event (A) the Share Purchase Agreement terminates pursuant to Section 9.1(a) thereof, (B) the obligations of Micron and Qimonda to consummate the 2nd Closing terminate pursuant to Section 9.1(b) thereof or (C) the 2nd Closing has not occurred by February 28, 2009.

2.2. Notices. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given (a) on the day of delivery if delivered in person, or if delivered by facsimile upon confirmation of receipt, (b) on the first Business Day following the date of dispatch if delivered by a nationally recognized express courier service, or (c) on the tenth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated by notice given in accordance with this Section 2.2 by the Party to receive such notice:

If to NTC, to:

Hwa-Ya Technology Park, 669, Fuhsing 3rd Road,
Kueishan, Taoyuan, Taiwan, R.O.C.
Attn: Legal & IP Division
Fax: +886-3-3962226

If to Qimonda, to:

Qimonda AG
Gustav-Heinemann-Ring 123
81739 Munich
Germany
Attention: Legal Department
Facsimile: (49-89) 60088-442450

with copies to:

Cleary Gottlieb Steen & Hamilton LLP
 Main Tower
 Neue Mainzer Strasse 52
 60311 Frankfurt am Main
 Germany
 Attention: Ward A. Greenberg
 Facsimile: (49-69) 97103-199

If to the Company, to:

Hwa-ya Technology Park, 667, Fuhsing 3rd Road,
 Kueishan, Taoyuan, Taiwan, R.O.C
 Attn: Legal Department
 Fax: +886 3 327 2988 ext 3385

If to Micron, to:
 8000 South Federal Way
 Boise, Idaho 83716-9632
 Attn: General Counsel
 Facsimile: (208) 363-1309

with a copy to:

Wilson Sonsini Goodrich & Rosati, Professional Corporation
 650 Page Mill Road
 Palo Alto, CA 94304
 Attention: John A. Fore
 Facsimile: (650) 493-6811

2.3. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, heirs, and assigns. Nothing in this Agreement, express or implied, is intended to confer upon any person or entity other than the Parties hereto, or their successors or permitted assigns, any rights or remedies under or by reason of this Agreement.

2.4. Amendments. This Agreement may be amended, superseded, canceled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by each of the Parties or, in the case of a waiver, by the Party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any such right, power or privilege, nor any single or partial exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege.

2.5. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without giving effect to principles of conflicts of laws).

2.6. Entire Agreement. This Agreement and any other collateral agreements executed in connection with the consummation of the transactions contemplated hereby contains the sole and entire agreement and understanding of the Parties with respect to the subject matter hereof and supersedes all prior negotiations and understandings of any kind with respect to the subject matter hereof.

2.7. Headings; Construction. The various captions of this Agreement are for reference only and shall not be considered or referred to in resolving questions of interpretation of this Agreement. The Parties acknowledge and agree that (a) each Party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to its revision, (b) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement, and (c) the terms and provisions of this Agreement shall be construed fairly as to all Parties, regardless of which Party was generally responsible for the preparation of this Agreement.

2.8. Specific Performance. The Parties hereto agree that if any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached, irreparable damage would occur, no adequate remedy at law would exist and damages would be difficult to determine, and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy at law or equity.

2.9. Savings Clause. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, statute, rule or regulation, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, the Parties shall use reasonable efforts to negotiate and include in this Agreement, in lieu of such illegal, invalid or unenforceable provision, a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

2.10. Language. This Agreement shall be prepared in the English language, and the English language version shall be official. No translation into German, Chinese or any other language shall be taken into consideration in the interpretation of this Agreement.

2.11. Counterparts; Delivery by Fax or E-mail. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all, of the Parties hereto. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail transmission shall be equally as effective as delivery of an executed hard copy of the same. Any Party doing so shall also deliver an executed hard copy of same, but the failure by such Party to deliver an executed hard copy shall not affect the validity, enforceability and binding effect of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Transition Agreement to be executed on the date first above written.

NANYA TECHNOLOGY CORPORATION

By: /s/ Jih Lien

Name: Jih Lien

Title: President

QIMONDA AG

By: /s/ Kin Wah Loh

Name: Kin Wah Loh

Title: Chief Executive Officer

By: /s/ Nicole Lau

Name: Nicole Lau

Title: Vice President and Corporate Legal
Counsel

INOTERA MEMORIES, INC.

By: /s/ Joseph Hsieh

Name: Joseph Hsieh

Title: Supervisor

By: /s/ Jessica Chin

Name: Jessica Chin

Title: Supervisor

MICRON TECHNOLOGY, INC.

By: /s/ D. Mark Durcan

Name: D. Mark Durcan

Title: President and Chief Operating Officer

(Signature Page of Transition Agreement)

MICRON GUARANTY AGREEMENT

This GUARANTY (this “**Guaranty**”) is made and entered into as of the 26th day of November, 2008, by Micron Technology, Inc., a Delaware corporation (“**Guarantor**”), in favor of Nanya Technology Corporation Nanya Technology Corporation [Translation from Chinese], a company incorporated under the laws of the ROC (“**Beneficiary**” or “**NTC**”). Capitalized terms used in this Guaranty shall have the respective meanings ascribed to such terms in Article I of this Guaranty 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, between Micron Semiconductor B.V., a private limited liability company organized under the laws of the Netherlands (“**MNL**”) and Beneficiary (the “**Joint Venture Agreement**”).

RECITALS

- A. Beneficiary 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 (the “**Joint Venture Company**”).
- B. Infineon subsequently assigned to Qimonda AG, a company incorporated under the laws of Germany (hereinafter “**Qimonda**”), all of Infineon’s Shares in the Joint Venture Company.
- C. In accordance with that certain Share Purchase Agreement, dated October 11, 2008, by and between MNL and Qimonda, MNL is acquiring Shares in the Joint Venture Company from Qimonda.
- D. MNL and Beneficiary are entering into the Joint Venture Agreement to set forth certain agreements regarding the ownership, governance and operation of the Joint Venture Company.
- E. Guarantor is the direct or indirect owner of all the equity securities of MNL, and Guarantor will, as a consequence, benefit from the consummation of the transactions contemplated by the Joint Venture Agreement.
- F. Beneficiary is not willing to enter into the Joint Venture Agreement unless Guarantor agrees to be bound by the terms of this Guaranty.
- G. In order to induce Beneficiary to enter into the Joint Venture Agreement, Guarantor has agreed to execute and deliver to Beneficiary this Guaranty.

NOW THEREFORE, for good and valuable consideration, including the inducement of Beneficiary 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:

“**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**” shall have the meaning set forth in the preamble of this Guaranty.

“**Guarantor**” shall have the meaning set forth in the preamble of this Guaranty.

“**Guaranty**” shall have the meaning set forth in the preamble of this Guaranty.

“**Guaranty Obligations**” shall have the meaning set forth in Section 2.1 of this Guaranty.

“**Infineon**” shall have the meaning set forth in the Recitals.

“**Joint Venture Agreement**” shall have the meaning set forth in the preamble of this Guaranty.

“**Joint Venture Company**” shall have the meaning set forth in the Recitals.

“**MNL**” shall have the meaning set forth in the preamble of this Guaranty.

“**NTC**” shall have the meaning set forth in the preamble of this Guaranty.

“**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.

“**Qimonda**” shall have the meaning set forth in the Recitals.

“**ROC**” or “**Taiwan**” means the Republic of China.

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 of its obligations under the Joint Venture Agreement (the “**Guaranty Obligations**”).

Section 2.2 Nature of Guaranty. Insofar as the payment by MNL of any sums of money to the Joint Venture Company or the Beneficiary is involved, this Guaranty is a guarantee of payment and not of collection. Should the Joint Venture Company or the Beneficiary be obligated by any bankruptcy or other law to repay to MNL, Guarantor, or any trustee, receiver or other representative of either 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 under the Joint Venture Agreement. Upon any default by MNL in the performance of the Guaranty Obligations, Beneficiary may immediately proceed against Guarantor hereunder without bringing action against or joining MNL.

Section 2.4 Defenses to Enforcement. It will not be a defense to the enforcement of this Guaranty that MNL’s execution and delivery of the Joint Venture Agreement was unauthorized or otherwise invalid, or that any of MNL’s obligations thereunder are otherwise unenforceable. Guarantor intends this Guaranty to apply in respect of the obligations of MNL that would arise under the Joint Venture Agreement if all of the provisions thereof were enforceable against MNL 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, 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 or any liquidation or dissolution of MNL; or
- (e) any failure of MNL 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 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 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 of this Guaranty) that there is no obligation on the part of MNL 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 shall follow and abide by the restriction on unilateral purchases of the Shares of Joint Venture Company under Section 3.3 of the Joint Venture Agreement;

(b) Guarantor owns, directly or indirectly, all of the equity securities of MNL;

(c) Guarantor has the authority, capacity and power to execute and deliver this Guaranty and to consummate the transactions contemplated hereby;

(d) this Guaranty constitutes the valid and binding obligation of Guarantor and is enforceable against Guarantor in accordance with its terms; and

(e) 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 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):

- (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) 368-4537

Section 3.3 Amendments and Waivers.

(a) Any provision of this Guaranty may be amended or waived if, but only if, such amendment or waiver is in writing and is signed, in the case of an amendment, by the Parties, or in the case of a waiver, by the Party against whom the waiver is to be effective.

(b) 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 3.4 Choice of Law. This Guaranty shall be construed and enforced in accordance with and governed by the laws of the ROC, without giving effect to the principles of conflict of laws thereof.

Section 3.5 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 a court located in the Taipei District Court, 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.

Section 3.6 Counterparts. This Guaranty may be executed in several counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument.

Section 3.7 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 3.8 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 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.

[SIGNATURE PAGES FOLLOW]

DLI-6216547v4

IN WITNESS WHEREOF, this Guaranty has been executed and delivered as of the date first written above.

NANYA TECHNOLOGY CORPORATION

By: /s/ Jih Lien
Jih Lien
President

THIS IS A SIGNATURE PAGE FOR THE MICRON GUARANTY AGREEMENT
ENTERED INTO BY AND BETWEEN NTC AND MICRON

MICRON TECHNOLOGY, INC.

By: /s/ D. Mark Durcan
D. Mark Durcan
President and Chief Operating Officer

**THIS IS A SIGNATURE PAGE FOR THE MICRON GUARANTY AGREEMENT
ENTERED INTO BY AND BETWEEN NTC AND MICRON**

SHARE PURCHASE AGREEMENT

by and among

MICRON TECHNOLOGY, INC.

as the Buyer Parent,

MICRON SEMICONDUCTOR B.V.,

as the Buyer,

QIMONDA AG

as the Seller Parent

and

QIMONDA HOLDING B.V.,

as the Seller Sub

Dated as of October 11, 2008

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SHARE PURCHASE AGREEMENT

Share Purchase Agreement, dated October 11, 2008 (this “**Agreement**”), by and among Micron Technology, Inc., a Delaware corporation (the “**Buyer Parent**”), Micron Semiconductor B.V., a private limited company organized under the Laws of the Netherlands and a Subsidiary of the Buyer Parent (the “**Buyer**”), Qimonda AG, a German stock corporation (*Aktiengesellschaft*) with its seat in Munich, registered in the commercial register at the local court of Munich under HRB 152545 (the “**Seller Parent**”) and Qimonda Holding B.V., a private limited company organized under the Laws of the Netherlands and a Subsidiary of the Seller Parent (the “**Seller Sub**” and, each of the Seller Sub and the Seller Parent, individually, a “**Seller**” and the Seller Sub, together with the Seller Parent, the “**Sellers**”).

WHEREAS, Inotera Memories, Inc., a company limited by shares under the Laws of the ROC (the “**Company**”) was established by Nanya Technology Corporation, a company limited by shares legally established under the Laws of the ROC (“**Nanya**”) and Infineon Technologies AG, a company legally established under the Laws of Germany (“**Infineon**”), pursuant to that certain Joint Venture Agreement, dated November 13, 2002 (such agreement, as amended by the first through fifth amendments thereto through the date hereof, the Letter of Undertaking dated December 3, 2003 and the Letter of Agreement re Assignment dated July 28, 2006, the “**JV Agreement**”);

WHEREAS, in connection with the entry into the JV Agreement and the operation of the Company, Nanya, Infineon and the Company entered into certain agreements, including (i) the Joint Product Development and Product Swap Agreement between Nanya and Infineon, as predecessor in interest to the Seller Parent, dated November 17, 2003 (including two Amendments and Letter Agreement re Assignment dated July 31, 2006), (ii) the Technical Information Exchange Agreement between Nanya and the Seller Parent dated September 24, 2007, (iii) the (110nm) License and (90/70 nm) Technical Cooperation Agreement for DRAM Process Technology between Nanya and Infineon, as predecessor in interest to the Seller Parent, dated November 13, 2002 (including fourteen Amendments, two Engineering Sample Agreements and Letter Agreement re Assignment dated July 31, 2006), (iv) the 60nm Technical Cooperation Agreement between Nanya and Infineon, as predecessor in interest to the Seller Parent, for DRAM Process Technology dated September 29, 2005 (including three Amendments of Letter Agreement re Assignment dated July 31, 2006), (v) the Product Purchase and Capacity Reservation Agreement among Nanya, Infineon, as predecessor in interest to the Seller Parent, and the Company dated July 15, 2003 (including three Amendments and one Supplement), (vi) the Know How Transfer Agreement among Nanya, Infineon, as predecessor in interest to the Seller Parent, and the Company initially dated November 13, 2002 (including two Amendments) and (vii) the Service Agreement between Nanya and the Company dated July 15, 2003 (the “**Ancillary JV Agreements**”);

WHEREAS, in accordance with the terms of the JV Agreement, Infineon assigned all of its rights and, with certain exceptions, its obligations under the JV Agreement and the Ancillary JV Agreements to the Seller Parent in connection with the transfer by Infineon of all of its shareholdings in the Company to the Seller Parent;

WHEREAS, the Sellers are the owners of the number of shares of common stock (“**Common Stock**”) of the Company, set forth on Schedule 1 hereto (as such shares may be adjusted, increased or decreased as a result of a stock split, reverse stock split or reclassification, the “**Seller Shares**”), representing approximately 35.61% of the issued and outstanding shares of Common Stock and 100% of the shares of Common Stock owned by the Sellers and their Subsidiaries;

WHEREAS, of the Seller Shares, 4,483,800 shares (as such shares may be adjusted, increased or decreased as a result of a stock split, reverse stock split or reclassification, the “**FINI Shares**”) are held by the Sellers as foreign institutional investors under applicable ROC law and 1,184,088,059 shares (as such shares may be adjusted, increased or decreased as a result of a stock split, reverse stock split or reclassification, the “**Shares**”) were acquired by the Sellers under the Statute for Investment by Foreign Nationals of the ROC pursuant to foreign investment approved status granted by the Investment Commission, Ministry of Economic Affairs, ROC;

WHEREAS, the Sellers desire to sell the Shares to the Buyer (the “**Share Purchase**”) and to deliver to the Buyer the proceeds from Seller Parent’s disposal of the FINI Shares in exchange for the Consideration, in each case in accordance with the terms of this Agreement;

WHEREAS, in connection with and conditioned upon the transfer of the 2nd Close Shares, effective as of the 2nd Closing, the JV Agreement and the Ancillary JV Agreements will terminate, subject to the survival of certain provisions agreed upon by the parties;

WHEREAS, it is a condition to the 2nd Closing that the Buyer Parent and Nanya will enter into a new joint venture agreement with respect to the Company (the “**New JV Agreement**”), and that the Buyer Parent, Nanya and/or the Company will enter into certain related agreements and modify certain existing agreements in connection therewith (the “**New JV Ancillary Agreements**”);

WHEREAS, on the date hereof, the Buyer Parent, the Buyer and Nanya have entered into a Memorandum of Understanding (the “**New JV MOU**”), a copy of which has been provided to the Seller Parent, which sets forth the current expectations of the parties with respect to the principal terms of the New JV Agreement and the New JV Ancillary Agreements;

WHEREAS, it is a condition to the 1st Closing that the Buyer Parent and the Seller Parent will enter into a patent cross license agreement mutually agreeable to the parties (the “**Patent Cross License**”), which shall become effectively immediately upon the 2nd Closing;

WHEREAS, concurrently with the execution and delivery hereof, and as an inducement for the parties to enter into this Agreement:

1. the Buyer Parent, the Seller Parent, Nanya and the Company have entered into that certain Transition Agreement, in the form attached hereto as Exhibit A (the “**Transition Agreement**”), which shall become effective immediately upon the 1st Closing;

2. the Buyer Parent and the Seller Parent have entered into that certain Technology License Agreement, in the form attached hereto as Exhibit B (the “**Buyer/Seller**”

TLA”), which shall become effective immediately upon the later of (A) the 1st Closing and (B) the receipt of the 2nd Close FCO Approval;

3. Infineon and the Buyer Parent have entered into that certain Technology License Agreement, in the form attached hereto as **Exhibit C** (the “**Infineon/Buyer TLA**”), which shall become effective immediately upon the later of (A) the 1st Closing and (B) the receipt of the 2nd Close FCO Approval;

4. the Company and the Buyer Parent have entered into that certain Patent and Technology License Agreement, in the form attached hereto as **Exhibit D** (the “**Company/Buyer PTLA**”) which shall become effective immediately upon the later of (A) the 1st Closing and (B) the receipt of the 2nd Close FCO Approval;

5. the Company and the Buyer Parent have entered into that certain Technology Transfer Agreement for 68-50nm Process Nodes, in the form attached hereto as **Exhibit E** (the “**Company/Buyer TTA**”), which shall become effective immediately upon the 2nd Closing;

6. Nanya and the Seller Parent have entered into that certain Termination Agreement, in the form attached hereto as **Exhibit F** (the “**Nanya/Seller Termination Agreement**”), dated as of the date hereof, which shall become effective immediately upon the 2nd Closing;

7. Nanya, Seller Parent and the Company have entered into that certain Release Agreement, in the form attached hereto as **Exhibit G** (the “**Release Agreement**”), dated as of the date hereof, which shall become effective upon the 2nd Closing; and

8. the Seller Parent and the Company have entered into that certain Supply Agreement, in the form attached hereto as **Exhibit H** (the “**Supply Agreement**”), which shall become effective immediately upon the 2nd Closing; and

WHEREAS, the parties desire to make certain representations, warranties and agreements in connection with the Share Purchase;

NOW, THEREFORE, in consideration of the mutual covenants, representations, warranties and agreements entered into herein, and intending to be legally bound hereby, the parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 Defined Terms

(a) For all purposes of this Agreement, the following terms shall have the respective meanings set forth in this Section 1.1:

“1st Close FIA Approval” means the foreign investment approval by the Investment Commission for the transfer of at least the 1st Close Shares from the Sellers to the Buyer contemplated hereby.

“2nd Close FIA Approval” means the foreign investment approval by the Investment Commission for the transfer of the 2nd Close Shares (or, as the case may be, all of the Shares) from the Sellers to the Buyer contemplated hereby.

“Acquisition Documents” means this Agreement, the Transition Agreement, the Patent Cross License and the Buyer/Seller TLA.

“Acquisition Other Documents” means the Infineon/Buyer TLA, the Company/Buyer PTLA, the Company/Buyer TTA, the Nanya/Seller Termination Agreement, the Supply Agreement and the Release Agreement.

“Acquisition Total Documents” means the Acquisition Documents and the Acquisition Other Documents.

“Affiliate” means, with respect to any Person, any other Person controlling, controlled by or under common control with such Person. The term “control” (including, with correlative meaning, the terms “controlled by” and “under common control with”), as applied to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities, by contract or otherwise.

“Articles of Incorporation” means the 11th Revised Articles of Incorporation of the Company, dated June 26, 2008.

“Business Day” means a day other than Saturday, Sunday or any day on which banks located in New York, New York, Taipei, Taiwan or Munich, Germany are authorized or obligated by Law to close.

“Contracts” means all agreements, contracts, indentures, deeds, and other legally binding instruments of any kind, oral or written.

“Data Room” means the electronic data room established through Intralinks and available for review by the Buyer Parent and its representatives on or prior to the Business Day prior to the date of this Agreement.

“FCO” means the German Federal Cartel Office (*Bundeskartellamt*).

“**Governmental Body**” means any court, tribunal, authority, ministry, commission, or other governmental or quasi-governmental regulatory or adjudicative body or authority of any kind.

“**Investment Commission**” means the Investment Commission of the Ministry of Economic Affairs of the ROC.

“**Knowledge**” of the Sellers means the actual knowledge of any of the members of the Management Board (*Vorstand*) of the Seller Parent and any of the following individuals: Daniel Wong, Frank Tillner, Klaus Fleischmann and Jessica Chin.

“**Laws**” means laws, statutes, rules of the common law, regulations, rules, codes, ordinances, or other legal requirements of any Governmental Body.

“**Lien**” means any lien, mortgage, deed of trust, pledge, hypothecation, right of others, claim, security interest, encumbrance, lease, sublease, license, interest, option, charge, easement, servitude, proxy, voting trust or agreement or other restriction or limitation of any nature whatsoever.

“**Material Adverse Effect**” means any change, effect, event, circumstance or development, individually or in the aggregate, that is or would reasonably be expected to (i) be materially adverse to the business, assets, properties, financial condition or results of operations of the Company and its Subsidiaries, taken as a whole, (ii) have a material adverse effect on the ability of the Sellers to perform any of their obligations under this Agreement, or (iii) have a material adverse effect on the Buyer’s rights in and to the Shares or upon the Buyer’s ability to exercise rights as a shareholder of the Company after the 1st Closing or the 2nd Closing; provided that no change, effect, event, circumstance or development, individually or in the aggregate, resulting from any of the following shall be deemed to be or constitute a “Material Adverse Effect” or taken into account when determining whether a “Material Adverse Effect” has occurred or would reasonably be expected to occur: (A) general economic conditions (or changes therein) in the industry in which the Company operates, to the extent that such conditions do not have a substantially disproportionate impact on the Company, relative to other companies operating in the same industry in which the Company operates, (B) reduction in production by the Company directly related to the implementation of the transactions contemplated by the Company/Buyer TTA and (C) the effect of the provisions of any of the Acquisition Total Documents that become effective prior to the 2ndClosing.

“**Orders**” means orders, judgments, injunctions, awards, decrees or writs of a Governmental Body.

“**Person**” means any individual, corporation, partnership, limited liability company, limited liability partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

“**Proceeding**” shall mean any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

“**ROC**” means the Republic of China.

“**Subsidiary**” means, in relation to any Person, any corporation or other entity of which the securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions are owned directly or indirectly by such Person.

(b) The following capitalized terms are defined in the following Sections of this Agreement:

Term	Section
1st Closing	2.1(b)
1st Close Cash Consideration	2.1(a)
1st Close Shares	2.1(a)
1st Close Acquisition Documents	6.2(h)
1st Closing Date	2.2
1st Share Purchase	2.1(a)
2nd Close FCO Approval	6.4(a)
2nd Closing	2.4(a)
2nd Close Shares	2.4(a)
2nd Closing Cash Consideration	2.4(a)
2nd Closing Date	2.5
2nd Share Purchase	2.6
Agreement	Preamble
Antitrust Authorities	5.6(b)
Ancillary JV Agreements	Recitals
Audited Financial Statements	3.9
Buyer	Preamble
Buyer Parent	Preamble
Buyer/Seller TLA	Recitals
Claim Notice	8.3(a)
Closing Location	2.1(b)
Closing Time	2.1(b)
Commitment Letters	4.5
Common Stock	Recitals
Company	Recitals
Company/Buyer PTLA	Recitals
Company/Buyer TTA	Recitals
Company Financial Statements	3.9
Consideration	2.4(a)
Equity Interests	3.1
Financing	5.13
FINI Shares	Recitals

GAAP	3.9
GWB	6.1(a)
Indemnified Party	8.3(a)
Indemnifying Party	8.3(a)
Infineon	Recitals
Infineon/Buyer TLA	Recitals
JV Agreement	Recitals
Limited Reps	8.4(a)
Losses	8.1
Most Recent Balance Sheet Date	3.9
Nanya	Recitals
Nanya Waiver	3.1
Nanya/Seller Termination Agreement	Recitals
New JV Agreement	Recitals
New JV Ancillary Agreements	Recitals
New JV MOU	Recitals
Non-Solicitation Period	5.8
Opinion	6.2(e)
Ordinary Course of Business	5.2(a)
Outside Date	9.1(b)
Patent Cross License	Recitals
Release Agreement	Recitals
Seller Parent/Inotera Contracts	3.10
Seller Parent	Preamble
Seller Parent/Nanya Contracts	3.10
Seller Sub	Preamble
Seller Shares	Recitals
Seller (or Sellers)	Preamble
Share Purchase	Recitals
Shares	Recitals
Sellers' Disclosure Letter	Article III
Share Purchase	Recitals
Supply Agreement	Recitals
Threshold Amount	8.4(a)
Transfer Taxes	10.9
Transition Agreement	Recitals
Unaudited Financial Statements	3.9

1.2 Interpretation

. All pronouns and any variations thereof refer to the masculine, feminine or neuter, singular or plural, as the context may require. All terms defined in this Agreement in their singular or plural forms have correlative meanings when used herein in their plural or singular forms, respectively. Unless otherwise expressly provided, the words “include,” “includes” and “including” do not limit

the preceding words or terms and shall be deemed to be followed by the words “without limitation.” Any Law defined or referred to herein (or in any agreement or instrument that is referred to herein) means such Law as it may from time to time be amended, modified or supplemented, including by succession of comparable successor statutes. All references in this Agreement to Articles, Sections, Exhibits and Schedules shall be deemed references to such parts of this Agreement, unless the context shall otherwise require. All references in this Agreement to “\$” shall mean to United States Dollars. The Article and Section headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement. Any reference to a date or time shall, unless otherwise expressly provided, mean such date or time in Taipei, Taiwan.

ARTICLE II

PURCHASE AND SALE OF SHARES; PURCHASE PRICE

2.1 1st Closing; Sale and Purchase of 1st Close Shares

(a) At the 1st Closing, upon the terms and subject to the conditions of this Agreement, the Sellers shall sell, transfer, assign, convey and deliver (the “**1st Share Purchase**”) to the Buyer, free and clear of all Liens, and the Buyer shall purchase from the Sellers, the number of Shares set forth opposite each Seller’s name on Schedule 2 hereto (the “**1st Close Shares**”) for aggregate consideration consisting of \$200,000,000 in cash (the “**1st Close Cash Consideration**”), with the amounts payable for the account of each Seller set forth opposite its name on Schedule 2 hereto. For purposes of the 1st Close FIA Approval application and calculation of the ROC securities transaction tax, the parties hereto agree that the 1st Close Cash Consideration shall be deemed to represent NT\$ equivalent to NT\$6,460,000,000 at the exchange rate of US\$1 to NT\$32.30.

(b) The closing of the purchase and sale of the 1st Close Shares contemplated by Section 2.1(a) (the “**1st Closing**”) shall take place at the offices of Jones Day (Taipei), located at 6F, 2 Tun Hwa S. Road, Sec. 2 Taipei 106, Taiwan, R.O.C. (the “**Closing Location**”), at 3:00 p.m. local time (the “**Closing Time**”), on the second Business Day after the conditions to the 1st Closing set forth in Article VI have been satisfied or (if permissible) waived (except for those conditions to be satisfied at the 1st Closing, but subject to the satisfaction or waiver thereof at the 1st Closing), or such other time or date as the parties may mutually agree in writing; provided that that the parties agree to use their reasonable best efforts to cause the 1st Closing to occur on the first Business Day following the satisfaction and waiver of such conditions to the 1st Closing.

2.2 1st Closing Date

. The date upon which the 1st Closing occurs is referred to herein as the “**1st Closing Date**”, and the 1st Closing shall be deemed to have occurred at 12:01 a.m. (Taipei time) on the 1st Closing Date.

2.3 Deliveries at 1st Closing

. At the 1st Closing:

(a) the Seller Parent shall deliver a copy of an extract from the Company’s shareholders register showing the Buyer as a shareholder of the Company holding the number of the 1st Close Shares,

(b) the Sellers shall take such other actions as may be required under the Laws of the ROC and other Laws to register the 1st Close Shares in the name of the Buyer, and

(c) the Buyer shall deliver to the Sellers, by wire transfer of immediately available funds pursuant to the instructions delivered by the Sellers to the Buyer Parent at least two Business Days prior to the 1st Closing, an amount equal to (i) the 1st Close Cash Consideration, less (ii) the applicable ROC securities transaction tax (which tax shall be withheld by the Buyer and remitted by the Buyer to the applicable taxing authority on behalf of the Sellers).

2.4 2nd Closing; Sale and Purchase of 2nd Close Shares

.

(a) At the 2nd Closing, upon the terms and subject to the conditions of this Agreement, the Sellers shall sell, transfer, assign, convey and deliver (the “**2nd Share Purchase**”) to the Buyer, free and clear of all Liens, and the Buyer shall purchase from the Sellers, the number of shares set forth opposite each Seller’s name on Schedule 2 hereto (the “**2nd Close Shares**”), for aggregate consideration consisting of \$200,000,000 in cash (the “**2nd Closing Cash Consideration**”) and, together with the 1st Close Cash Consideration, the “**Consideration**”), with the amounts payable for the account of each Seller set forth opposite its name on Schedule 2 hereto. For the avoidance of doubt, the Consideration paid by Buyer to the Sellers pursuant to the terms of this Agreement shall be for the Shares and for the right to receive the proceeds from the sale of the FINI Shares pursuant to Section 5.14 hereof, and no additional consideration shall be paid or payable by Buyer in exchange for the proceeds from the FINI Shares. For purposes of the 2nd Close FIA Approval application (it being understood that the 2nd Close FIA Approval application is subsumed in the 1st Close FIA Approval application) and calculation of the ROC securities transaction tax, the parties hereto agree that the 2nd Closing Cash Consideration shall be deemed to represent NT\$ equivalent to NT\$6,460,000,000 at the exchange rate of US\$1 to NT\$32.30.

(b) The closing of the purchase and sale of the 2nd Close Shares (the “**2nd Closing**”) shall take place at the Closing Location at the Closing Time, on the second Business Day after the conditions to the 2nd Closing set forth in Article VI have been satisfied or (if permissible) waived (except for those conditions to be satisfied at the 2nd Closing, but subject to the satisfaction or waiver

thereof at the 2nd Closing), or such other time or date as the parties may mutually agree in writing; provided that that the parties agree to use their reasonable best efforts to cause the 2nd Closing to occur on the first Business Day following the satisfaction and waiver of the conditions to the 2nd Closing; provided further, however, that unless the Buyer has received the 2nd Close FIA Approval, the 2nd Closing shall not occur prior to the 51st day following the 1st Closing Date.

2.5 2nd Closing Date

. The date upon which the 2ndClosing occurs is referred to herein as the “**2nd Closing Date**”, and the 2nd Closing shall be deemed to have occurred at 12:01 a.m. (Taipei time) on the 2nd Closing Date.

2.6 Deliveries at 2nd Closing

. At the 2ndClosing:

(a) the Sellers shall

(i) deliver a copy of an extract of the Company’s shareholders register showing the Buyer as a shareholder of the Company holding the number of the 1st Close Shares and the 2nd Close Shares,

(ii) take such other actions as may be required under the Laws of the ROC and other Laws to register the 2nd Close Shares in the name of the Buyer, and

(iii) deliver resignations from each member of the Board of Directors and Supervisors of the Company that is a corporate representative or designee of any Seller with effect as of the 2nd Closing, and

(b) the Buyer shall deliver to the Sellers, by wire transfer of immediately available funds pursuant to the instructions delivered by the Sellers to the Buyer Parent at least two Business Days prior to the 2nd Closing, an amount equal to (i) the 2nd Closing Cash Consideration, less (ii) the applicable ROC securities transaction tax (which tax shall be withheld by the Buyer and remitted by the Buyer to the applicable taxing authority on behalf of the Sellers).

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE SELLERS

The Sellers represent and warrant as of each of (i) the date hereof, (ii) the 1st Closing Date and (iii) the 2nd Closing Date that, except as set forth in the disclosure letter delivered to the Buyer Parent concurrently herewith (the “**Sellers’ Disclosure Letter**”):

3.1 Title to the Shares

. The Sellers have good and valid title to the Seller Shares, free and clear of any and all Liens, and upon consummation of the Share Purchase contemplated hereby, the Buyer will acquire from the Sellers good and marketable title to the Shares, free and clear of any and all Liens. The rights of Nanya arising as a result of the Share Purchase under the JV Agreement and the Ancillary JV Agreements have been waived per that certain waiver agreement between the Seller Parent and Nanya, a signed copy of which has been previously provided to the Buyer Parent (the “**Nanya Waiver**”). Other than the JV Agreement and the Acquisition Total Documents, neither of the Sellers nor any of their Affiliates is a party to any voting trust or voting agreement with respect to, or granted any proxy to represent, the Seller Shares. The only shares of the Company owned by the Sellers and their Subsidiaries are the Seller Shares. Upon the full consummation of the Share Purchase contemplated hereby at the 2nd Closing Date, neither of the Sellers nor any of their Affiliates will (i) directly or indirectly own any shares of Common Stock (other than the FINI Shares) or shares, options, warrants, calls, stock appreciation rights, or other rights or commitments or any other agreements of any character relating to dividend rights or to the sale, issuance or voting of, or the granting of rights to acquire, any shares of capital stock or voting securities of the Company, or any securities or obligations convertible into, exchangeable for or evidencing the right to purchase any shares of capital stock or voting securities of the Company (collectively “**Equity Interests**”), or (ii) have the right or authority, contractual or otherwise, to directly or indirectly direct or participate in the vote of any share of Common Stock or Equity Interests in the Company or the business, management and policies of the Company.

3.2 Due Incorporation

. The Seller Parent is a stock corporation duly incorporated, validly existing under the Laws of Germany. The Seller Sub is a private limited company duly organized under and validly existing under the Laws of The Netherlands.

3.3 Sellers Right, Power and Authority

. Each of the Sellers has the full right, power and authority to enter into the Acquisition Documents to which it is, or is intended to be, a party and all other instruments contemplated by or related thereto, to transfer, convey and sell the Shares to the Buyer in accordance with this Agreement (in the case of the Sellers) and to perform its obligations under the Acquisition Documents.

3.4 Enforceability

. Each of the Sellers has duly executed and delivered this Agreement (and, as applicable, at or prior to the 1st Closing, each of the Sellers will have duly executed and delivered the other Acquisition Documents to which it is intended to be a party), and this Agreement constitutes (and, as applicable, as of the date of effectiveness of each of the other Acquisition Documents to which it is intended to be a party will constitute) a legal, valid and binding obligation, enforceable against each of the Sellers in accordance with its terms, except as the same may be limited by bankruptcy,

insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights generally now or hereafter in effect, and by general equitable principles.

3.5 No Consents Required

. The execution, delivery and performance by each of the Sellers of this Agreement, and the execution, delivery and performance by each of the Sellers of the other Acquisition Documents to which it is or is intended to be a party, do not and will not (i) violate, in any material respect, any Law, (ii) other than the clearances required from the applicable competition law authorities and the foreign investment approval by the Investment Commission, require any filing with, or any permit, consent or approval of, or the giving of any notice to (including under any right of first refusal or similar provision), any Person (including filings, consents or approvals required under any Contracts to which the either of the Sellers, any of their Affiliates or the Company is a party or is bound), (iii) result in a material violation or breach of, conflict with, constitute (with or without due notice or lapse of time or both) a default under, or give rise to any right of termination, cancellation or acceleration of, any charter document of or any right or obligation of either of the Sellers, any of its Affiliates or the Company or to a loss of any benefit to which either of the Sellers, any of their Affiliates or the Company is entitled, or create or trigger any right of any counterparty under any material Contract binding upon the any Seller, any of its Affiliates or the Company, or (iv) result in the creation or imposition of any Lien, (A) on any material asset of the Company, (B) on any of the Shares, or (C) that could adversely affect any of the Sellers or the Company's ability to perform its obligations under any of the Acquisition Total Documents in any material respect.

3.6 Due Organization of the Company

. The Company is a company-limited-by-shares duly incorporated and validly existing under the Laws of the ROC and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted, except where the failure to have such power and authority would not have a Material Adverse Effect. The Company's Articles of Incorporation as attached to this Agreement as Schedule 3.6(a) represent the current version of such Articles of Incorporation as of the date of this Agreement. The Shares have been validly issued and are fully paid up. All facts relating to the Company that can be registered in the companies register of the ROC Ministry of Economic Affairs are actually registered in such companies register. Schedule 3.6(b) contains a print-out from the companies register, up-to-date, complete and correct as of the date hereof. There exist no agreements outside the Articles of Incorporation, the JV Agreement and the Nanya/Seller Termination Agreement that affect the governance and organization of the Company in any material respect.

3.7 Capitalization

. The authorized share capital of the Company consists of a total of 4,000,000,000 authorized Common Stock, par value NT\$10 per share of which 3,337,512,000 are issued and outstanding. The rights and privileges of the Common Stock are as stated in the Company's Articles of Incorporation. There are no other authorized classes of equity interests of any type other than the

Common Stock. The Company does not have and is not bound by any outstanding subscriptions, options, warrants, calls, commitments, agreements or other obligations of any character calling for the purchase or issuance of any Common Stock or subscription rights or any equity security of the Company or any securities representing the right to purchase or otherwise receive any Common Stock or any other equity security of the Company other than (i) 100,000 options (at 1,000 shares per option) granted pursuant to the Company's "Rules of 2007 IMI Employee Stock Option Issuance and Subscription" in 2007 and (ii) 80,000 options (at 1,000 shares per option) granted pursuant to the Company's "Rules of 2008 IMI Employee Stock Option Issuance and Subscription" in 2008. All 180,000 options granted and issued have not yet been vested or converted, and some may have been forfeited because of termination of employment.

3.8 Subsidiaries

. To the Sellers' Knowledge, the Company has no Subsidiaries.

3.9 Financial Statements

. The (i) audited balance sheets of the Company as of December 31, 2007 and the audited statements of income, stockholders' equity and cash flows, for the fiscal year then ended, together with all related notes and schedules thereto (collectively, the "**Audited Financial Statements**"), accompanied by the audit report of KPMG, independent auditors of the Company, and (ii) the unaudited balance sheet of the Company as of June 30, 2008 (the "**Most Recent Balance Sheet Date**") and the unaudited statements of income, stockholders' equity and cash flows for the six month period then ended (the "**Unaudited Financial Statements**") and, together with the Audited Financial Statements, the "**Company Financial Statements**"), fairly present in all material respects the financial position of the Company as of the respective dates thereof, and the results of the operations of the Company for the periods covered thereby, in each case in accordance with generally accepted accounting principles in the ROC ("**GAAP**") consistently applied during the periods involved, except as indicated in any notes thereto (and except in the case of the Unaudited Financial Statements, for the absence of footnotes and subject to year-end audit adjustments).

3.10 Contracts and Relationships

. Section 3.10(a) of the Sellers' Disclosure Letter lists, and the Sellers have provided to the Buyer Parent in the Data Room true and complete copies of, all Contracts between any Seller and any of its Subsidiaries (excluding the Company) and the Company (the "**Seller Parent/Inotera Contracts**"). Section 3.10(b) of the Sellers' Disclosure Letter lists, and the Sellers have provided to the Buyer Parent in the Data Room true and complete copies of, all Contracts between any Seller and any of its Subsidiaries (excluding the Company) and Nanya and any of its Subsidiaries that relate to the Company (the "**Seller Parent/Nanya Contracts**"). After the 2nd Closing Date, (i) the relationships between the Seller and any of its Subsidiaries, on the one hand, and the Company, on the other hand, will be governed exclusively by the Acquisition Total Documents to which they are parties, and (ii) the Sellers and their Subsidiaries will not be party to any other Contracts with respect to the Company.

3.11 Legal Proceedings; Orders

(a) There is no Proceeding that has been commenced by or against any Seller that challenges, or that could reasonably be expected to have the effect of preventing, delaying, or making illegal, any of the transactions contemplated hereby.

(b) There is no Order to which any Seller, or any of the assets owned by any Seller, is subject that has or could reasonably be expected to have the effect of preventing, delaying, or making illegal any of the transactions contemplated hereby.

3.12 Brokers

. Neither of the Sellers nor any of their Subsidiaries has paid or agreed to pay, or received any claim with respect to, any brokerage commissions, finders' fees or similar compensation (it being understood that the foregoing does not include the fees, commissions and expenses payable by Seller Parent to its financial advisor with respect to the transactions contemplated hereby and any fees, commissions and expenses payable in connection with the sale of the Seller Shares, which fees, commissions and expenses shall be paid solely by the Sellers) in connection with the transactions contemplated hereby.

3.13 Insolvency; Stand Alone Viability

. The Management Board of the Seller Parent has obtained external legal and business advice regarding relevant insolvency considerations and has determined that the Seller Parent is neither "illiquid" (*zahlungsunfähig*) nor "over-indebted" (*überschuldet*) within the meaning of the relevant sections of the German Insolvency Code (*Insolvenzordnung*), and no third party has applied for the opening of insolvency proceedings (*Insolvenzverfahren*) with respect to the Seller Parent.

3.14 Company Assets and Revenue

. The Company does not hold assets located in the United States having an aggregate total value of over \$63.1 million, and did not make aggregate sales in or into the United States of over \$63.1 million in its most recent fiscal year, within the meaning of 16 C.F.R. 802.51 of the Rule promulgated under the Hart-Scott-Rodino Act, as amended.

3.15 Disclosure

. To Sellers' Knowledge, none of this Agreement, the Company Financial Statements, the Sellers' Disclosure Letter, any other Acquisition Document or any certificate delivered in accordance with the terms of any such agreement or document, contains any untrue statement of material fact, or omits any statement of material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which they were made, not misleading.

REPRESENTATIONS AND WARRANTIES OF THE BUYER PARENT AND THE BUYER

The Buyer Parent and the Buyer represent and warrant that as of each of (i) the date hereof, (ii) the 1st Closing Date and (iii) the 2nd Closing Date that:

4.1 Due Incorporation and Authority

. The Buyer Parent is a corporation duly organized, validly existing and in good standing under the Laws of Delaware. The Buyer Parent has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted. The Buyer is a private limited company duly organized under and validly existing under the Laws of The Netherlands. The Buyer has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business as now being conducted.

4.2 Buyer Right, Power and Authority

. Each of the Buyer Parent and the Buyer has the full right, power and authority to enter into the Acquisition Documents to which it is or is intended to be a party and all other instruments contemplated by or related thereto and to perform its obligations under the Acquisition Documents.

4.3 Enforceability

. Each of the Buyer Parent and the Buyer has duly executed and delivered this Agreement, and this Agreement constitutes (and, as applicable, as of the effective date of each of the other Acquisition Documents to which it is intended to be a party will constitute) a legal, valid and binding obligation, enforceable against each of the Buyer Parent and the Buyer, as applicable, in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights generally now or hereafter in effect, and by general equitable principles.

4.4 No Consents Required

. The execution, delivery and performance by each of the Buyer Parent and the Buyer of this Agreement, and the execution, delivery and performance of the other Acquisition Documents to which they are to be a party, do not and will not (i) violate, in any material respect, any Law, (ii) other than the clearances required from the applicable competition law authorities and the foreign investment approval by the Investment Commission, require any material filing with, or any material permit, consent or approval of, or the giving of any material notice to (including under any right of first refusal or similar material provision), any Person (including material filings, consents or approvals required under any material Contracts to which the Buyer Parent or the Buyer, any of their Affiliates is a party or is bound), (iii) result in a violation or breach of, or conflict with, any charter document of the Buyer Parent or the Buyer.

4.5 Financing

. The Buyer Parent has, as of the date hereof and as of the 1st Closing Date, sufficient cash, available lines of credit or other sources of immediately available funds to enable it to pay the 1st Close Cash Consideration. The Buyer Parent also has, as of the date hereof and as of the 1st Closing Date, commitment letters executed by the Buyer Parent, the Buyer and prospective lenders regarding proposed financing sufficient to fund the 2nd Closing Cash Consideration, copies of which has been provided to the Seller Parent (the “**Commitment Letters**”). As of the date hereof, the Commitment Letters have not been revoked or amended.

ARTICLE V

COVENANTS AND AGREEMENTS

5.1 Voting of Shares

. Between the date of this Agreement and the 2nd Closing Date, except as contemplated by this Agreement or otherwise agreed to in writing by the Buyer Parent, the Sellers shall not:

(a) vote the Seller Shares in favor of the amendment of, or otherwise permit the Company to amend the Company’s Articles of Incorporation;

(b) resolve on any increase in the paid-in capital of the Company;

(c) vote the Seller Shares to approve or otherwise permit the declaration, setting aside or payment of any dividend or other distribution on or in respect of the Common Stock or other shares of the Company; or

(d) vote the Seller Shares in favor of the amendment of any Acquisition Total Document or any agreement listed in Section 3.10 of the Sellers’ Disclosure Letter; or

(e) enter into any voting agreement or voting trust, grant any proxy, or otherwise grant or transfer any voting rights with respect to any of the Seller Shares.

5.2 Conduct of Business

. From and after the date hereof and until the 2nd Closing, unless the Buyer Parent shall have given its prior written consent to Seller Parent to do otherwise, the Sellers shall not exert their influence, through the voting of Company securities or otherwise, to cause the Company to take any of the following actions (provided, however, that nothing in this Agreement shall require any member of the Board of Directors of the Company to violate his or her duties to the Company under applicable corporate or other Laws):

- (a) operate the business of the Company other than in the ordinary and usual course of normal day-to-day operations of such business as conducted prior to the date hereof (the “**Ordinary Course of Business**”) or fail to maintain all of the facilities, assets and properties of the Company in their condition as of the date hereof, normal wear and tear excepted;
- (b) eliminate or reduce the insurance coverage of the Company’s facilities, assets, properties or interests;
- (c) (i) disrupt the Company’s business organizations, (ii) terminate the services of the Company’s present employees and other service providers, or (iii) terminate the Company’s present relationships with its material vendors, suppliers and customers and other Persons having business relationships with it;
- (d) (i) solicit, encourage, cooperate with or facilitate (by way of furnishing information or otherwise) any inquiries or proposals (other than the transactions contemplated hereby) for the acquisition of the stock, assets or business of the Company or (ii) acquire any material assets, properties or interests other than in the Ordinary Course of Business;
- (e) merge or consolidate with any other Person, amend or modify its organizational documents or effect any issuance of securities, stock split, reverse stock split or reclassification;
- (f) enter into, or become obligated under, any material Contract;
- (g) terminate or change, amend or otherwise modify any material Contract;
- (h) take any action to implement, or decide to implement in the future, any material technology or process not in use by the Company on the date hereof;
- (i) incur or guarantee any indebtedness or suffer or permit the creation of any Lien outside the Ordinary Course of Business upon any facilities, assets, properties or interests of the Company;
- (j) retain or hire any new senior management employee, increase or otherwise change the rate or nature of compensation and benefits (including wages, salaries and bonuses and benefits under pension profit sharing, deferred compensation and other employee benefit plans and programs) which is paid or payable to any employee of the Company or enter into or amend any employment, consulting or similar Contract, in each case outside the Ordinary Course of Business;
- (k) release, settle or compromise any material claim, or waive any material right, of the Company or settle or compromise any pending or threatened material claim against the Company; and
- (l) agree to take any action which would breach or violate clauses (a)-(k) of this Section 5.2.

5.3 No Transfer of the Shares

. Between the date of this Agreement and the 2nd Closing Date, the Sellers shall not voluntarily or involuntarily offer, sell, grant any option on or interest in, transfer any rights with respect to, create or permit any Lien on or otherwise transfer (or make any exchange, gift, assignment or pledge of) all or any part of its interest in the Seller Shares.

5.4 Expenses

. Other than the filing fees in respect of the regulatory filings contemplated by Section 5.6(a), which shall be shared equally by the Buyer Parent and the Seller Parent, and except as otherwise specifically provided herein, each of the Buyer Parent and the Buyer, on the one hand, and the Sellers, on the other hand, shall bear their respective expenses incurred in connection with the preparation, execution and performance of this Agreement and the transactions contemplated hereby, including all fees and expenses of agents, representatives, counsel, investment bankers and accountants.

5.5 Publicity

. Promptly following the execution and delivery of this Agreement by each of its parties, the Seller Parent and the Buyer Parent shall each issue a press release in the forms previously agreed between them. Except as may be required by Law or the rules and regulations of any exchange on which a party's securities are listed or quoted, the parties hereto agree that, between the date hereof and the 2nd Closing Date, no further publicity release or announcement concerning this Agreement and the transactions contemplated hereby shall be made without advance consultation between the Seller Parent and the Buyer Parent, and (except to the extent that compliance with this requirement would result in a violation of applicable Law or the rules or regulations of any exchange on which a party's securities are listed or quoted), prior to making such announcement, the announcing party will deliver a draft of such announcement to the other parties and shall give the other parties reasonable opportunity to comment thereon.

5.6 Required Consents

(a) The Buyer Parent and the Seller Parent shall take all reasonable steps necessary to cause all filings that are required to be made with respect to the consummation of the 1st Share Purchase and the 2nd Share Purchase with all competent merger control authorities and Governmental Bodies to be made as soon as practicable after the date hereof, and (i) in respect of filings required for the 1st Closing, on or prior to the later of (x) one (1) Business Day of the date hereof, and (y) one (1) Business Day from the date that the Buyer Parent receives from Nanya all information and documentation required to make such a filing and any required approvals from Nanya in respect of making any joint filings; and (ii) in respect of filings required for the 2nd Closing, on or prior to the later of (x) three (3) Business Days from the date hereof, and (y) one (1) Business Day from the date that the Buyer Parent receives from Nanya all information and

documentation required to make such a filing and any required approvals from Nanya in respect of making any joint filings. Such filings shall (unless otherwise required by Law) be made by the Buyer Parent on behalf of all parties, but the contents of such filings shall require prior written approval of the Seller Parent, which shall not unreasonably be withheld or delayed.

(b) In connection with the efforts referenced in Section 5.6(a), each of the Buyer Parent and the Seller Parent shall (i) use its reasonable efforts to cooperate in all respects with the other in connection with any filing or submission and in connection with any investigation or other inquiry, including any Proceeding initiated by a private party, (ii) keep the other party informed of any material communication received by such party from, or given by such party to, the antitrust or competition law authorities of any jurisdiction (collectively, the “**Antitrust Authorities**”), or any other Governmental Body and of any material communication received or given in connection with any Proceeding by a private party, in each case regarding any of the transactions contemplated hereby, and (iii) to the extent permissible by applicable Laws, permit the other party or its external counsel to review any material communication given by it to, and consult with each other in advance of any meeting or conference with, any Antitrust Authority, or any such other Governmental Body or, in connection with any Proceeding by a private party, with any other Person.

(c) Each of the Buyer Parent and the Seller Parent shall exercise reasonable efforts to prevent the entry in any claim, action, suit, audit, assessment arbitration or inquiry, or any Proceeding, by or before any Governmental Body by any Antitrust Authority or any other Person of any Order which would prohibit, make unlawful or delay the consummation of the transactions contemplated by this Agreement.

(d) Each of the parties hereto shall cooperate in good faith with the Antitrust Authorities, consent to the sharing of confidential information among Antitrust Authorities, and undertake promptly any and all reasonable action required to complete lawfully the transactions contemplated by this Agreement. Notwithstanding the foregoing or any other provision of this Agreement, no party shall be required to agree to (a) any license, sale or other disposition or holding separate (through establishment of a trust or otherwise) of any shares of its capital stock or of any of its businesses, assets or properties, its Subsidiaries or Affiliates, (b) the imposition of any limitation on the ability of the Buyer Parent, its Subsidiaries or Affiliates or the Company to conduct their respective businesses or own any capital stock or assets or to acquire, hold or exercise full rights of ownership of their respective businesses and, in the case of the Buyer Parent and the Buyer, the businesses of the Company, or (c) the imposition of any impediment on the Buyer Parent, its Subsidiaries or Affiliates or the Company under any Law governing competition, monopolies or restrictive trade practices. Nothing herein shall require the Buyer Parent or the Buyer to litigate with any Governmental Body.

(e) Each of the Sellers, the Buyer Parent and the Buyer shall exercise reasonable efforts to obtain or make all other required consents and notices.

(f) At all times prior to the 2nd Closing, the parties hereto shall cooperate and coordinate with each other, as appropriate, with respect to filings and notifications to Governmental

Bodies in connection with obtaining or making the required consents and notices. Without limiting the generality of the foregoing, the Seller Parent, on the one hand, and the Buyer Parent, on the other hand, shall make or cause to be made available all information reasonably requested by the other party to permit all necessary filings and notices to be made with or to Governmental Bodies as promptly as practicable after the date hereof. Each party shall promptly furnish or cause to be furnished all information and documents reasonably required by the relevant Governmental Bodies as may be appropriate in order to obtain or make any required consents and notices.

5.7 Change in Membership of Company Board

. The Sellers shall cause their representatives, as well as representatives of any Seller's Affiliate, on the Board of Directors and Supervisors of the Company to resign from their position with effect as of the end of the 2nd Closing Date. Prior to the 2nd Closing, the Seller Parent agrees to take all actions as may be necessary and shall cause the members of the Board of Directors of the Company appointed by the Seller Parent to vote and take such other actions as may be necessary, to call a meeting of the shareholders of the Company to be held as promptly as possible following the anticipated 2nd Closing for purposes of electing the nominees appointed by Buyer Parent to the Board of Directors and supervisors of the Company as contemplated by the New JV Agreement, and in the event the 2nd Closing is delayed for any reason beyond such anticipated 2nd Closing, to take such steps as are necessary to postpone or adjourn the meeting from time to time so that it occurs as promptly as possible following the new anticipated 2nd Closing. In the alternative, to the extent necessary to ensure such meeting occurs as promptly as practicable following the 2nd Closing, if reasonably feasible to do so, such meeting shall be called for the purpose of full re-election of all directors of the Board and the supervisors.

5.8 Sellers Non-Solicit

. For a period of three (3) years from the 2nd Closing Date (the "**Non-Solicitation Period**"), the Sellers shall not, and shall not permit any of the Sellers' Affiliates or any representatives, advisors or agents of the Sellers or any of its Affiliates to, directly or indirectly, contact, approach or solicit for the purpose of offering employment to or hiring (whether as an employee, consultant, agent, independent contractor or otherwise), or actually hire, any Person employed by or seconded by any Person other than the Seller or any of the Seller's Affiliates to the Company at any time before the 2nd Closing Date or employed by or seconded by any Person other than the Seller or any of the Seller's Affiliates to the Company during the Non-Solicitation Period, without the prior written consent of the Buyer Parent. During the Non-Solicitation Period, the Sellers shall not, and shall not permit any of the Sellers' Affiliates or any representatives, advisors or agents of the Sellers or any of its Affiliates to, directly or indirectly, induce or attempt to induce any Person that has a business relation with the Company to terminate or modify that business relationship.

5.9 Further Assurances

. Subject to the terms and conditions herein provided, each of the parties hereto agrees to use its reasonable efforts to take or cause to be taken all reasonable action and to do or cause to be done

all things reasonably necessary, proper or advisable under applicable Laws and regulations to consummate and make effective the transactions contemplated by this Agreement, including (a) contesting any Proceeding relating to the transactions contemplated hereby and (b) executing any additional instruments necessary to consummate the transactions contemplated hereby. If at any time after the date hereof any further reasonable action is necessary to carry out the purposes of this Agreement, the proper officers and directors of each party hereto shall take all such necessary action.

5.10 Buyer Financing.

The Buyer Parent shall use its reasonable efforts to take, or cause to be taken, such actions and to do, or cause to be done, such things as are reasonably necessary, proper or advisable to arrange and obtain financing on the terms and conditions described in the Commitment Letters or alternate financing on terms and conditions reasonably acceptable to the Buyer Parent.

5.11 New JV Agreements; Patent Cross License.

(a) The Buyer Parent shall use its reasonable efforts to take, or cause to be taken, such actions and to do, or cause to be done, such things as are reasonably necessary, proper or advisable to negotiate and enter into the New JV Agreement and New JV Ancillary Agreements on the terms and conditions contemplated by the New JV MOU or such other terms and conditions as are reasonably acceptable to the Buyer Parent.

(b) The Buyer Parent and the Seller Parent shall negotiate in good faith and use their reasonable efforts to take, or cause to be taken, such actions and to do, or cause to be done, such things as are reasonably necessary, proper or advisable to negotiate and enter into the Patent Cross License on terms and conditions as are reasonably acceptable to the parties.

5.12 Notification

. From the date hereof, the Sellers shall promptly notify the Buyer Parent in writing of any event, condition, fact or circumstance that would make the satisfaction of any of the conditions set forth in Article VI hereof on the 1st Closing Date or the 2nd Closing Date impossible or reasonably unlikely. Each such notification shall include a certification of an officer of each Seller that such notification is being delivered in accordance with this Section 5.12.

5.13 Buyer Parent Financing Information Assistance

. The Sellers will use all reasonable efforts to provide to the Buyer Parent upon request, or to cause the Company to provide to the Buyer Parent upon request, all cooperation reasonably requested by the Buyer Parent in connection with the arrangement of any financing proposed by the Buyer Parent in connection with the transactions contemplated hereby (a “**Financing**”), including (i) participation in a reasonable number of meetings, presentations, road shows, due diligence sessions and sessions with rating agencies, and (ii) assisting with the preparation of materials for rating agency presentations, offering documents, private placement memoranda, bank information

memoranda, prospectuses, business projections and similar documents required in connection with the Financing.

5.14 Sale of FINI Shares

. Promptly after the 2nd Closing Date, the Seller Parent shall sell the FINI Shares on the Taiwan Stock Exchange and shall remit the proceeds of such sale, net of brokerage fees and commissions and taxes (if any), to the Buyer.

ARTICLE VI

CONDITIONS PRECEDENT TO THE OBLIGATION OF THE PARTIES TO CLOSE

6.1 1st Closing Conditions to All Parties' Obligations

. The obligation of the Buyer Parent, the Buyer and the Sellers to consummate the 1st Closing is subject to the fulfillment on or prior to the 1st Closing Date of the following conditions:

(a) German Merger Control. The FCO shall have cleared the purchase of at least the 1st Close Shares by the Buyer. This condition shall be deemed satisfied if the FCO (i) has declared that the concentration does not meet the requirements for prohibition pursuant to Section 36(1) of the Act Against Restraints of Competition (*Gesetz gegen Wettbewerbsbeschränkungen*, the “**GW**B”) (either unconditionally or subject to the fulfillment of certain conditions or obligations) or (ii) the concentration is deemed to be cleared by the FCO pursuant to Section 41(1) and 40(1) GWB.

(b) Governmental Bodies Approvals. All required consents, approvals and authorizations of all relevant Governmental Bodies necessary for the 1st Share Purchase, in addition to the FCO clearance referred to in clause (a), shall have been obtained and all required waiting periods required by such authorities shall have expired, including the 1st Close FIA Approval. For the avoidance of doubt, the parties are aware of no such consents, approvals or authorizations other than the 1st Close FIA Approval.

(c) No Orders. No temporary restraining Order, preliminary or permanent injunction or other Order which restrains, prohibits, or renders this Agreement or the consummation of the Share Purchase as contemplated by this Agreement illegal shall be in effect. No Law shall have been promulgated, enacted, entered, enforced or deemed applicable by a Governmental Body, which (i) would make illegal the Share Purchase as contemplated by this Agreement or (ii) has had or could reasonably be expected to have a Material Adverse Effect.

(d) Commitment Letters. The Commitment Letters shall not have been revoked or shall have been superseded by an alternative commitment obtained pursuant to Section 5.10.

(e) Nanya Waiver. The Nanya Waiver shall not have been revoked or modified.

6.2 1st Closing Conditions to the Buyer Parent and the Buyer's Obligations

. The obligation of the Buyer Parent and the Buyer to consummate the 1st Closing is subject to the following additional conditions, any of which may be waived by the Buyer Parent in its sole discretion:

(a) Representations of the Sellers True. The representations and warranties of the Sellers set forth in Article III (disregarding all qualifications and exceptions contained therein regarding materiality or a Material Adverse Effect) shall have been true and correct when made and shall be true and correct as of the 1st Closing as if made as of the 1st Closing (other than those representations and warranties made as of a specific date, which shall be true and correct as of such date), subject only to exceptions that would not, individually or in the aggregate, have a Material Adverse Effect.

(b) Covenant Compliance. The Sellers shall have complied in all material respects with their covenants set forth herein and in the other Acquisition Documents.

(c) Certificate of the Sellers. The Buyer Parent shall have received a certificate from each Seller, validly executed by an authorized officer of each Seller, to the effect that, as of the 1st Closing, the conditions specified in Sections 6.2(a), 6.2(b), 6.2(d) and 6.2(g) have been satisfied.

(d) Solvency. The Management Board of the Seller Parent shall have obtained external legal and business advice regarding relevant insolvency considerations and has determined that the Seller Parent is neither "illiquid" (*zahlungsunfähig*) nor "over-indebted" (*überschuldet*) within the meaning of the relevant sections of the German Insolvency Code (*Insolvenzordnung*), and no third party shall have applied for the opening of insolvency proceedings (*Insolvenzverfahren*) with respect to the Seller Parent.

(e) Fair Value Opinion. The Management Board of the Seller Parent shall have received the opinion of Citigroup Global Markets Limited (the "**Opinion**") to the effect that, as of the date hereof, and based upon and subject to the factors and assumptions set forth therein, (i) the 1st Close Cash Consideration is fair with respect to the 1st Close Shares from a financial point of view to the Sellers and (ii) the Consideration, when taken as a whole, is fair from a financial point of view to the Sellers. A true and complete copy of the Opinion shall have been delivered to the Buyer Parent, and such opinion shall not have been amended or rescinded as of the 1st Closing Date.

(f) Pending Proceedings. No Proceeding shall be pending which could reasonably be expected to restrain or prohibit the consummation of the Share Purchase as contemplated by this Agreement.

(g) Material Adverse Effect. There shall not have occurred a Material Adverse Effect.

(h) Acquisition Documents. Each of (i) the Transition Agreement, (ii) the Buyer/Seller TLA, (iii) the Infineon/Buyer TLA, and (iv) the Company/Buyer PTLA (collectively,

the “**1st Close Acquisition Documents**”), shall be in full force and effect concurrent with the 1st Closing.

(i) **TDCC Book-Entry Share Transfer.** To enable Buyer’s designated securities agent to file appropriate and complete application with the TDCC to effect book-entry transfer of the 1st Close Shares, at least two (2) Business Days prior to the 1st Closing Date, the Sellers shall have delivered to Buyer’s designated securities agent: (1) a share transfer application form duly completed and chopped or signed, as appropriate, by each Seller for transfer of its portion of the 1st Close Shares to the Buyer, (2) each Seller’s TDCC securities passbook and relevant securities chop, (3) original filing record of the Sellers with the ROC and Future Bureau for transfer of shares by the Seller Parent as a major shareholder and director of the Company and by the Seller Sub as supervisor of the Company, (4) the 1st Close FIA Approval letter issued by the Investment Commission approving Sellers’ transfer of the 1st Close Shares to the Buyer, and (5) any other instruments and documents necessary for the application to the TDCC to effect book-entry transfer of the 1st Close Shares. Promptly after the book-entry transfer of the 1st Close Shares has been completed, the Buyer shall cause its designated securities agent to return the securities passbooks and chops referred to in clause (2) above to the Sellers.

(j) **Patent Cross License.** Each of the Buyer Parent and the Seller Parent shall have entered into the Patent Cross License, which shall become effective upon the 2nd Closing.

6.3 **1st Closing Conditions to the Sellers’ Obligations**

. The obligation of the Sellers to consummate the 1st Closing is subject to the following additional conditions, any of which may be waived by the Sellers in their sole discretion:

(a) **Representations of the Buyer Parent and the Buyer True.** The representations and warranties of the Buyer Parent and the Buyer set forth in Article IV (disregarding all qualifications and exceptions contained therein regarding materiality) shall have been true and correct when made and shall be true and correct as of the 1st Closing as if made as of the 1st Closing (other than those representations and warranties made as of a specific date, which shall be true and correct as of such date), subject only to exceptions that would not, individually or in the aggregate, have a material adverse effect on the ability of the Buyer Parent and the Buyer to perform any of their respective obligations under this Agreement.

(b) **Covenant Compliance.** The Buyer Parent and the Buyer shall have complied in all material respects with their covenants set forth herein.

(c) **Certificate of the Buyer Parent.** The Sellers shall have received a certificate from the Buyer Parent, validly executed by an authorized officer of the Buyer Parent, to the effect that, as of the 1st Closing, the conditions specified in Sections 6.3(a) and 6.3(b) have been satisfied.

6.4 **2nd Closing Conditions to All Parties’ Obligations**

. The obligation of the Buyer Parent, the Buyer and the Sellers to consummate the 2nd Closing is subject to the fulfillment on or prior to the 2nd Closing Date of the following conditions:

(a) German Merger Control. The FCO shall have cleared the purchase of the 2nd Close Shares (or, as the case may be, have cleared the purchase of the 2nd Close Shares concurrently with its approval of the purchase of the 1st Close Shares in the 1st Close FCO Approval) by the Buyer (the “**2nd Close FCO Approval**”). This condition shall be deemed satisfied if the FCO (i) has declared that the concentration does not meet the requirements for prohibition pursuant to Section 36(1) of the GWB (either unconditionally or subject to the fulfillment of certain conditions or obligations) or (ii) the concentration is deemed to be cleared by the FCO pursuant to Section 41(1) and 40(1) GWB.

(b) ROC Competition Authorities Approvals. The ROC Competition Authorities shall have cleared the purchase of the 2nd Close Shares.

(c) Governmental Bodies Approvals. All required consents, approvals and authorizations of all relevant Governmental Bodies necessary for the 2nd Share Purchase shall have been obtained, in addition to the 2nd Close FCO Approval, and all required waiting periods required by such authorities shall have expired, including the 2nd Close FIA Approval. For the avoidance of doubt, the parties are aware of no such consents, approvals or authorizations other than the 2nd Close FIA Approval.

(d) No Orders. No temporary restraining Order, preliminary or permanent injunction or other Order which restrains, prohibits, or renders this Agreement or the consummation of the Share Purchase as contemplated by this Agreement illegal shall be in effect. No Law shall have been promulgated, enacted, entered, enforced or deemed applicable by a Governmental Body, which (i) would make illegal the Share Purchase as contemplated by this Agreement or (ii) has had or could reasonably be expected to have a Material Adverse Effect.

(e) Nanya Waiver. The Nanya Waiver shall have not been revoked or modified.

6.5 2nd Closing Conditions to the Buyer Parent and the Buyer’s Obligations

. The obligation of the Buyer Parent and the Buyer to consummate the 2nd Closing is subject to the following additional conditions, any of which may be waived by the Buyer Parent in its sole discretion:

(a) Representations of the Sellers True. The representations and warranties of the Sellers set forth in Article III (disregarding all qualifications and exceptions contained therein regarding materiality or a Material Adverse Effect) shall have been true and correct when made and shall be true and correct as of the 2nd Closing as if made as of the 2nd Closing (other than those representations and warranties made as of a specific date, which shall be true and correct as of such date), subject only to exceptions that would not, individually or in the aggregate, have a Material Adverse Effect.

(b) Covenant Compliance. The Sellers shall have complied in all material respects with their covenants set forth herein and in the other Acquisition Documents.

(c) Certificate of the Sellers. The Buyer Parent shall have received a certificate from each Seller, validly executed by an authorized officer of each Seller, to the effect that, as of the 2nd Closing, the conditions specified in Sections 6.5(a), 6.5(b), 6.5(d), 6.5(e), 6.5(g) and 6.5(i)(B) have been satisfied.

(d) Solvency. The Management Board of the Seller Parent shall have obtained external legal and business advice regarding relevant insolvency considerations and has determined that the Seller Parent is neither “illiquid” (*zahlungsunfähig*) nor “over-indebted” (*überschuldet*) within the meaning of the relevant sections of the German Insolvency Code (*Insolvenzordnung*), and no third party shall have applied for the opening of insolvency proceedings (*Insolvenzverfahren*) with respect to the Seller Parent.

(e) Fair Value Opinion. The Management Board of the Seller Parent shall have received the Opinion, and the Opinion shall not have been amended or rescinded as of the 2nd Closing Date.

(f) Pending Proceedings. No Proceeding shall be pending which could reasonably be expected to restrain or prohibit the consummation of the Share Purchase as contemplated by this Agreement.

(g) Material Adverse Effect. There shall not have occurred a Material Adverse Effect.

(h) Financing. The Buyer Parent or the Buyer shall have obtained financing in an amount and on terms no less favorable to the Buyer Parent or the Buyer as those of the Commitment Letters.

(i) Third-Party Consents. (A) The Buyer Parent shall have been furnished with evidence reasonably satisfactory to it that the Company and/or each Seller, as applicable, have obtained or delivered consents, waivers, amendments and notices, in form and substance reasonably satisfactory to Buyer Parent, with respect to (a) the US\$260,000,000 Five-Year Syndicate Term Loan Agreement, dated as of January 14, 2004, by and among the Company, as Borrower, and the other parties thereto, (b) the US\$672,000,000 and NT\$5,700,000,000 Five-Year Syndicate Term Loan Agreement, dated as of October 14, 2004, by and among the Company, as Borrower, and the other parties thereto, and (c) US\$400,000,000 and NT\$27,000,000,000 Five-Year Syndicated Term Loan Agreement, dated as of March 5, 2007, by and among the Company, as Borrower, and the other parties thereto, and (B) the transactions contemplated by this Agreement shall not result in a default or event of default under any of the Company's outstanding public bonds, or any such incipient or prospective default or event of default.

(j) Company Board. The Sellers shall have secured resignations from each member of the Board of Directors and Supervisors of the Company that is a corporate representative

or designee of any Seller or its Affiliates with effect as of the 2nd Closing, and shall deliver copies of said resignations to the Buyer Parent.

(k) TDCC Book-Entry Share Transfer. To enable Buyer's designated securities agent to file appropriate and complete application with the TDCC to effect book-entry transfer of the 2nd Close Shares, at least two (2) Business Days prior to the 2nd Closing Date, the Sellers shall have delivered to Buyer's designated securities agent: (1) a share transfer application form duly completed and chopped or signed, as appropriate, by each Seller for transfer of its portion of the 2nd Close Shares to the Buyer, (2) each Seller's TDCC securities passbook and relevant securities chop, if not already delivered, (3) original filing record of each of the Sellers with the ROC Securities and Futures Bureau for transfer of shares by the Seller Parent as a major shareholder and director of the Company and by the Seller Sub as supervisor of the Company, (4) the 2nd Close FIA Approval letter issued by the Investment Commission approving the Sellers' transfer of the 2nd Close Shares to the Buyer, and (5) any other instruments and documents necessary for the application to the TDCC to effect book-entry transfer of the 2nd Close Shares.

(l) Acquisition Documents. Each of the 1st Close Acquisition Documents shall have become effective concurrent with the 1st Closing and shall continue to be in full force and effect in accordance with its terms. The Company/Buyer TTA shall have become effective concurrent with the later of (A) the receipt of the 2nd Close FCO Approval and (B) the 1st Closing and shall continue to be in full force and effect in accordance with its terms. The Nanya/Seller Termination Agreement shall be in full force and effect concurrent with the 2nd Closing.

(m) New JV Agreements. Each of the Buyer Parent and Nanya shall have entered into the New JV Agreement and each of the Buyer Parent and Nanya shall have entered into the New JV Ancillary Agreements on terms consistent with the New JV MOU and such agreements shall be effective in accordance with their terms as of no later than the 2nd Closing.

(n) Patent Cross License. The Patent Cross License shall be effective in accordance with its terms as of the 2nd Closing.

6.6 2nd Closing Conditions to the Sellers' Obligations

. The obligation of the Sellers to consummate the 2nd Closing is subject to the following additional conditions, any of which may be waived by the Sellers in their sole discretion:

(a) Representations of the Buyer Parent and the Buyer True. The representations and warranties of the Buyer Parent and the Buyer set forth in Article IV (disregarding all qualifications and exceptions contained therein regarding materiality) shall have been true and correct when made and shall be true and correct as of the 2nd Closing as if made as of the 2nd Closing (other than those representations and warranties made as of a specific date, which shall be true and correct as of such date), subject only to exceptions that would not, individually or in the aggregate, have a material adverse effect on the ability of the Buyer Parent and the Buyer to perform any of their respective obligations under this Agreement.

(b) Covenant Compliance. The Buyer Parent and the Buyer shall have complied in all material respects with their covenants set forth herein.

(c) Certificate of the Buyer Parent. The Sellers shall have received a certificate from the Buyer Parent, validly executed by an authorized officer of the Buyer Parent, to the effect that, as of the 2nd Closing, the conditions specified in Sections 6.6(a) and 6.6(b) have been satisfied.

ARTICLE VII

SURVIVAL

The Limited Reps and the representations and warranties of the Buyer Parent and the Buyer contained in Article IV shall survive until the first anniversary of the Date hereof or, if the 1st Closing or the 2nd Closing occurs, the later of the first anniversary of 1st Closing or the first anniversary of the 2nd Closing. Thereafter all such representations and warranties of the parties referred to in the immediately preceding sentence shall be extinguished and no claim for the recovery of any Losses may be asserted against any party in respect thereof, except that claims first asserted in a Claim Notice within the applicable period referred to above shall not thereafter be barred. The representations and warranties of the Sellers other than the Limited Reps and the covenants of the Buyer Parent, the Buyer and the Sellers contained in this Agreement which are not explicitly covered by the extinction pursuant to the two immediately preceding sentences shall survive beyond the date hereof, the 1st Closing and the 2nd Closing, except for those covenants that are expressly limited by their terms to other dates or times, which shall survive only to such dates or times. For the avoidance of doubt, the agreements of the Sellers contained in Section 5.2 shall terminate upon the 2nd Closing Date.

ARTICLE VIII

INDEMNIFICATION

8.1 Obligation of the Sellers to Indemnify

. From and after the 1st Closing Date, subject to Sections 8.3, 8.4 and 8.5, the Sellers shall indemnify, defend and hold harmless the Buyer Parent and the Buyer and each of their directors, officers and representatives, from and against all liabilities, losses and damages and reasonable attorneys' fees, court costs and other out-of-pocket expenses (collectively, "Losses") that arise out of, or result from, the breach of any representation, warranty, covenant or agreement of any Seller contained in this Agreement (or any representation, warranty, covenant or agreement in any certificate delivered pursuant to this Agreement) that survives the 1st Closing or the 2nd Closing pursuant to Article VII above.

8.2 Obligation of the Buyer Parent to Indemnify

. From and after the date hereof, subject to Sections 8.3, 8.4 and 8.5, the Buyer Parent shall indemnify, defend and hold harmless the Sellers and their directors, officers and representatives, from and against all Losses that arise out of or result from, the breach of any representation, warranty, covenant or agreement of the Buyer Parent or the Buyer contained in this Agreement (or any representation, warranty, covenant or agreement in any certificate delivered pursuant to this Agreement) that survives the date hereof, the 1st Closing and the 2nd Closing pursuant to Article VII above.

8.3 Indemnification Procedure

(a) Any indemnified party seeking indemnification under this Agreement (each, an “**Indemnified Party**”) shall, within the relevant limitation period provided in Article VII, promptly give the indemnifying party or parties (collectively, the “**Indemnifying Party**”) written notice (a “**Claim Notice**”) describing in reasonable detail the facts giving rise to any claims for indemnification hereunder and shall include in the Claims Notice (if then known) the amount or method of computation of the amount of such claim and a reference to the provision of this Agreement or any agreement, certificate or instrument delivered pursuant to this Agreement upon which such claim is based; *provided*, that a Claim Notice in respect of any action at law or in equity by or against a third party as to which indemnification will be sought shall be given promptly after the action or suit is commenced; *provided, further*, any delay or failure to so notify the Indemnifying Party shall only relieve the Indemnifying Party of its obligations hereunder to the extent, if at all, that it is prejudiced by reason of such delay or failure.

(b) The Indemnifying Party shall have the right, at its own cost, to participate jointly in the defense of any claim or demand in connection with which the Indemnified Party has claimed indemnification hereunder, and may elect to take over the defense of such claim or demand through counsel of its own choosing by so notifying the Indemnified Party within thirty (30) days of receipt of the Indemnified Party’s Claim Notice. If the Indemnifying Party makes such an election:

(i) it shall keep the Indemnified Party reasonably informed as to the status of such matter and shall promptly send copies of all pleadings to the Indemnified Party;

(ii) with respect to any issue involved in such claim or demand, it shall have the sole right to settle or otherwise dispose of such claim or demand on such terms as it, in its sole discretion, shall deem appropriate; *provided, however*, that the consent of the Indemnified Party to the settlement or disposition of any claim or demand shall be required if such settlement or disposition shall result in any liability to, or equitable relief against, the Indemnified Party; and

(iii) the Indemnified Party shall have the right to participate jointly in the defense of such claim or demand, but shall do so at its own cost not subject to reimbursement under Section 8.1 or 8.2.

(c) If the Indemnifying Party does not elect to take over the defense of a claim or demand, the Indemnified Party shall have the right to contest, compromise or settle such claim or demand in the exercise of its reasonable judgment; *provided, however*, that the consent of the Indemnifying Party to any compromise or settlement of such claim or demand shall be required, which consent shall not be unreasonably withheld.

(d) Each party agrees that it shall cooperate with the other parties in the defense of any claim or action.

8.4 Measure of and Limitations upon Indemnification

.

(a) The Sellers' liability for any Losses under this Article VIII shall be subject to the following limitations: (i) the Sellers shall have no liability for any Losses that arise directly or indirectly under Section 3.8, 3.9, 3.10, 3.11, 3.14 and 3.15 (the "**Limited Reps**") unless and until the aggregate amount of such Losses for which the Sellers are obligated to indemnify pursuant to Section 8.1 exceeds \$1,000,000 (the "**Threshold Amount**"), in which case the Sellers shall be liable only for the aggregate amount of such Losses related to the Limited Reps, as finally determined, that exceeds the Threshold Amount; and (ii) the aggregate liability of the Sellers for all such Losses related to the Limited Reps shall not exceed, in the aggregate, 25% of the Consideration actually paid to Sellers.

(b) IN NO EVENT SHALL ANY INDEMNIFYING PARTY BE LIABLE TO ANY INDEMNIFIED PARTY FOR ANY PUNITIVE DAMAGES (OTHER THAN INDEMNIFICATION FOR AMOUNTS PAID OR PAYABLE TO THIRD PARTIES IN RESPECT OF ANY THIRD PARTY CLAIM FOR WHICH INDEMNIFICATION HEREUNDER IS OTHERWISE REQUIRED).

8.5 Exclusivity of Indemnity

. The indemnification provided in this Article VIII shall be the sole and exclusive remedy after the 1st Closing Date and the 2nd Closing Date for damages available to the parties to this Agreement for breach of any of the representations, warranties, covenants and agreements contained herein or any right, claim or action arising from the transactions contemplated hereby that were by their terms to have been effected as of the 1st Closing Date or the 2nd Closing Date, respectively.

ARTICLE IX

TERMINATION OF AGREEMENT

9.1 Termination

.

(a) This Agreement may not be terminated prior to the 1st Closing, except as follows:

(i) by mutual agreement of the Buyer Parent and the Sellers;

(ii) by the Sellers, if there has been a breach by the Buyer Parent or the Buyer of any covenant, representation or warranty contained in this Agreement that has prevented the satisfaction of any condition to the obligations of the Sellers to consummate the 1st Closing, and such breach has not been waived by the Sellers or cured, if capable of cure, by the Buyer Parent or the Buyer, within thirty (30) days after written notice thereof from the Sellers;

(iii) by the Buyer Parent, if there has been a breach by any Seller of any covenant, representation or warranty contained in this Agreement that has resulted in a Material Adverse Effect or has prevented the satisfaction of any condition to the obligations of the Buyer Parent and the Buyer to consummate the 1st Closing, and such breach has not been waived by the Buyer Parent or, if capable of cure, cured by the Sellers, within thirty (30) days after written notice thereof from the Buyer Parent;

(iv) by the Buyer Parent, if after the date hereof the Seller Parent has applied (or is in violation of German Laws by having failed to have applied) for the opening of insolvency proceedings, or a third party has applied for the opening of insolvency proceedings (*Insolvenzverfahren*) with respect to the Seller Parent; and

(v) at the election of the Buyer Parent or the Sellers upon prior written notice, if any court of competent jurisdiction or other competent Governmental Body shall have issued a final Order restraining, enjoining or otherwise prohibiting the consummation of the 1st Share Purchase or the 2nd Share Purchase and such Order is or shall have become non-appealable.

(b) Following the 1st Closing, the obligations of the parties to consummate the 2nd Closing (whether or not the conditions under Section 6.4, Section 6.5 and Section 6.6 have been satisfied) may be terminated:

(i) by mutual agreement of the Buyer Parent and the Sellers;

(ii) at the election of the Buyer Parent or the Sellers upon prior written notice, if any one or more of the conditions set forth in Section 6.4, Section 6.5 and Section 6.6 has not been fulfilled (or waived by the party whose benefit such condition is for) as of the close of business on January 31, 2009 (the “**Outside Date**”), except that any party whose conduct is in breach of this Agreement and substantially results in the failure of such condition to be fulfilled may not be the terminating party under this clause;

(iii) at the election of the Seller Parent upon written notice, if all of the conditions set forth in Sections 6.4 and 6.5 other than any one or more of those set forth in Sections 6.5(h) and 6.5(m) have been fulfilled but the 2nd Closing has not been consummated as of the close of business on the day that is the later of (i) December 15, 2008 and (ii) five days after the first date

on which all of such conditions other than those set forth in Sections 6.5(h) and 6.5(m) are first fulfilled;

(iv) by Sellers, if there has been a breach by the Buyer Parent or the Buyer of any covenant, representation or warranty contained in this Agreement that has prevented the satisfaction of any condition to the obligations of the Sellers to consummate the 2nd Closing, and such breach has not been waived by the Sellers or cured, if capable of cure, by the Buyer Parent or the Buyer, within thirty (30) days after written notice thereof from the Sellers;

(v) by the Buyer Parent, if there has been a breach by any Seller of any covenant, representation or warranty contained in this Agreement that has resulted in a Material Adverse Effect or has prevented the satisfaction of any condition to the obligations of the Buyer Parent and the Buyer to consummate the 2nd Closing, and such breach has not been waived by the Buyer Parent or, if capable of cure, cured by the Sellers, within thirty (30) days after written notice thereof from the Buyer Parent;

(vi) by the Buyer Parent, if after the date hereof the Seller Parent has applied (or is in violation of German Laws by having failed to have applied) for the opening of insolvency proceedings, or a third party has applied for the opening of insolvency proceedings (*Insolvenzverfahren*) with respect to the Seller Parent; and

(vii) at the election of the Buyer Parent or the Sellers upon prior written notice, if any court of competent jurisdiction or other competent Governmental Body shall have issued a final Order restraining, enjoining or otherwise prohibiting the consummation of the 1st Share Purchase or the 2nd Share Purchase and such Order is or shall have become non-appealable.

9.2 Survival After Termination

(a) In the event of the termination of this Agreement pursuant to Section 9.1(a), the provisions of this Agreement shall immediately become void and of no further force or effect (other than Section 5.4, this Section 9.2, Article VII and Article X which shall survive the termination of this Agreement in accordance with their terms), and no party hereto will have any further obligations or liabilities hereunder except for obligations or liabilities arising under such surviving provisions or from a breach of this Agreement prior to such termination.

(b) In the event of the termination of the obligations of the parties to consummate the 2nd Closing pursuant to Section 9.1(b), the covenants and obligations of the parties under Sections 5.1, 5.2, 5.3, 5.5, 5.6 (but only with respect to the 2nd Closing), 5.7, 5.9 (but only with respect to the 2nd Closing), 5.10, 5.11, 5.12, 5.13 and 5.14 shall expire effective as of the termination of the obligations to consummate the 2nd Closing, and no party hereto will have any further obligations or liabilities under such provisions except for obligations or liabilities arising from a breach of any such provisions prior to such termination.

10.1 Governing Law; Venue

. EXCEPT TO THE EXTENT THAT ROC LAW IS MANDATORILY APPLICABLE TO THE COMPANY, THE TRANSFER IN REM OF THE SHARES IN THE COMPANY AND THE RIGHTS OF THE SHAREHOLDERS OF THE COMPANY, THIS AGREEMENT SHALL BE GOVERNED IN ALL RESPECTS, INCLUDING AS TO VALIDITY, INTERPRETATION AND EFFECT, BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES. EACH PARTY HEREBY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK AND THE UNITED STATES DISTRICT COURTS LOCATED IN THE CITY OF NEW YORK IN RESPECT OF THE INTERPRETATION AND ENFORCEMENT OF THE PROVISIONS OF THIS AGREEMENT AND OF THE DOCUMENTS REFERRED TO IN THIS AGREEMENT, AND IN RESPECT OF THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. EACH PARTY HEREBY WAIVES AND AGREES NOT TO ASSERT, AS A DEFENSE IN ANY ACTION, SUIT OR PROCEEDING FOR THE INTERPRETATION AND ENFORCEMENT HEREOF, OR ANY SUCH DOCUMENT OR IN RESPECT OF ANY SUCH TRANSACTION, THAT SUCH ACTION, SUIT OR PROCEEDING MAY NOT BE BROUGHT OR IS NOT MAINTAINABLE IN SUCH COURTS OR THAT THE VENUE THEREOF MAY NOT BE APPROPRIATE OR THAT THIS AGREEMENT OR ANY SUCH DOCUMENT MAY NOT BE ENFORCED IN OR BY SUCH COURTS. EACH PARTY HEREBY CONSENTS TO AND GRANTS ANY SUCH COURT JURISDICTION OVER THE PERSON OF SUCH PARTIES AND OVER THE SUBJECT MATTER OF ANY SUCH DISPUTE.

10.2 Notices

. Any notice or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given (a) on the day of delivery if delivered in Person, or if delivered by facsimile upon confirmation of receipt, (b) on the first Business Day following the date of dispatch if delivered by a nationally recognized express courier service, or (c) on the tenth Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid. All notices hereunder shall be delivered as set forth below, or pursuant to such other instructions as may be designated by notice given in accordance with this Section 10.2 by the party to receive such notice:

(a) if to the Buyer Parent or the Buyer, to:

Micron Technology, Inc.
8000 South Federal Way
Boise, Idaho 83716-9632

Attn: General Counsel
Facsimile: (208) 363-1309

with a copy to:

Wilson Sonsini Goodrich & Rosati, Professional Corporation
650 Page Mill Road
Palo Alto, CA 94304
Attention: John A. Fore
Facsimile: (650) 493-6811

(b) if to any Seller, to:

Qimonda AG
Gustav-Heinemann-Ring 123
81739 Munich
Germany
Attention: Legal Department
Facsimile: (49-89) 60088-442450

with copies to:

Cleary Gottlieb Steen & Hamilton LLP
Main Tower
Neue Mainzer Strasse 52
60311 Frankfurt am Main
Germany
Attention: Ward A. Greenberg
Facsimile: (49-69) 97103-199

10.3 Entire Agreement

. This Agreement and any other collateral agreements executed in connection with the consummation of the transactions contemplated hereby, contain the entire agreement among the parties with respect to the sale and purchase of the 1st Close Shares and 2nd Close Shares and supersede all prior agreements, written or oral, with respect thereto.

10.4 Waivers and Amendments

. This Agreement may be amended, superseded, canceled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by the Buyer Parent and the Sellers or, in the case of a waiver, by the party waiving compliance. No delay on the part of any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any party of any such right, power or privilege, nor any single or partial

exercise of any such right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege.

10.5 Binding Effect; Assignment

. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns. This Agreement is not assignable by any party without the prior written consent of the other parties; *provided, however*, that the Buyer can assign its obligations under this Agreement to the Buyer Parent or any of the Buyer Parent's wholly owned Subsidiaries. The Buyer Parent shall be jointly and severally liable with the Buyer or any successor or assignee of the Buyer or the Buyer Parent for all obligations arising under this Agreement of any such Person to or for the benefit of any of the Sellers.

10.6 Construction

. The parties acknowledge and agree that (a) each party and its counsel reviewed and negotiated the terms and provisions of this Agreement and have contributed to its revision, (b) the rule of construction to the effect that any ambiguities are resolved against the drafting party shall not be employed in the interpretation of this Agreement, and (c) the terms and provisions of this Agreement shall be construed fairly as to all parties, regardless of which party was generally responsible for the preparation of this Agreement.

10.7 Severability of Provisions

. If any provision or any portion of any provision of this Agreement shall be held invalid or unenforceable, the remaining portion of such provision and the remaining provisions of this Agreement shall not be affected thereby. If the application of any provision or any portion of any provision of this Agreement to any Person or circumstance shall be held invalid or unenforceable, the application of such provision or portion of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby. Furthermore, the parties shall use reasonable efforts to negotiate and include in this Agreement, in lieu of such illegal, invalid or unenforceable provision, a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

10.8 Counterparts; Delivery by Fax or E-mail

. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts together shall constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all, of the parties hereto. Delivery of an executed counterpart of this Agreement by facsimile or electronic mail transmission shall be equally as effective as delivery of an executed hard copy of the same. Any party doing so shall also deliver an executed hard copy of same, but the failure by such party to deliver an executed hard copy shall not affect the validity, enforceability and binding effect of this Agreement.

10.9 Transfer Taxes

. Other than as expressly provided in Sections 2.3(c) and 2.6(b), the Sellers shall (a) be responsible for any and all sales, use, stamp, documentary, filing, recording, transfer, real estate transfer, gross receipts, registration, duty or similar fees or taxes or governmental charges (together with any interest or penalty, addition to tax or additional amount imposed) as levied by any taxing authority in connection with the transactions contemplated by this Agreement (collectively, “**Transfer Taxes**”), and (b) timely file or caused to be filed all necessary documents (including all tax returns) with respect to Transfer Taxes

10.10 Language

. This Agreement shall be prepared in the English language, and the English language version shall be official. No translation into German, Chinese or any other language shall be taken into consideration in the interpretation of this Agreement.

10.11 No Third Party Beneficiaries

. No provision of this Agreement is intended to, or shall, confer any third party beneficiary or other rights or remedies upon any Person other than the parties hereto.

[Signature page follows]

IN WITNESS WHEREOF, the parties have executed this Share Purchase Agreement as of the date first above written.

BUYER:

MICRON SEMICONDUCTOR B.V.

By: /s/ Thomas L. Laws

Name: Thomas L. Laws

Title: Managing Director A

By: /s/ Patrick van Maurik

Name: Patrick van Maurik

Title: Managing Director B

BUYER PARENT:

MICRON TECHNOLOGY, INC.

By: /s/ D. Mark Durcan

Name: D. Mark Durcan

Title: President and Chief Operating Officer

SELLER PARENT:

QIMONDA AG

By: /s/ Kin Wah Loh

Name: Kin Wah Loh

Title: Chief Executive Officer

By: /s/ Nicole Lau

Name: Nicole Lau

Title: Vice President and Corporate Legal
Counsel

SELLER SUB:

QIMONDA HOLDING B.V.

By: /s/ Nicole Lau

Name: Nicole Lau

Title: Attorney in Fact

(Signature Page of Share Purchase Agreement)

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

NTC/MICRON CONFIDENTIAL

MASTER AGREEMENT

This MASTER AGREEMENT, is made and entered into as of this 26th day of November, 2008, among Micron Technology, Inc., a Delaware corporation (“**Micron**”), Micron Semiconductor B.V., a private limited liability company organized under the laws of the Netherlands (“**MNL**”), Nanya Technology Corporation Nanya Technology Corporation [Translation from Chinese] (“**NTC**”), a company incorporated under the laws of the Republic of China (“**ROC**” or “**Taiwan**”), MeiYa Technology Corporation MeiYa Technology Corporation [Translation from Chinese], a company incorporated under the laws of the ROC (“**MeiYa**” and, collectively with Micron, MNL and NTC, the “**Old JV Parties**”), and Inotera Memories, Inc. Inotera Memories Inc. [Translation from Chinese], a company incorporated under the laws of the ROC (“**IMI**” and, collectively with Micron, MNL and NTC, the “**New JV Parties**”).

RECITALS

A. The Old JV Parties entered into certain agreements with each other relating to the ownership, governance and operation of MeiYa and regarding certain business relationships among the Old JV Parties (such agreements, the “**MeiYa JV Documents**”).

B. In accordance with that certain Share Purchase Agreement, dated October 11, 2008 (the “**Qimonda / MNL Share Purchase Agreement**”), among Micron, MNL, Qimonda AG, a corporation organized under the laws of Germany (“**Qimonda**”), and Qimonda Holding B.V., a private limited company organized under the laws of the Netherlands (“**Qimonda B.V.**”), MNL is acquiring from Qimonda and Qimonda B.V. shares in IMI.

C. After the 2nd Closing (as defined hereinafter), MNL, NTC, MeiYa and IMI intend for IMI to conduct the MeiYa Rollup (as defined hereinafter).

D. Upon the 2nd Closing, the MeiYa Rollup or the MeiYa Dissolution (as defined hereinafter), (1) certain of the MeiYa JV Documents will remain in effect and intact without modification, (2) certain of the MeiYa JV Documents will be amended, (3) certain of the MeiYa JV Documents will be terminated, (4) the New JV Parties will enter into certain agreements relating to the ownership, governance and operations of IMI and regarding certain relationships among the New JV Parties (such agreements, the “**IMI JV Documents**”) and (5) MeiYa and IMI will enter into certain agreements related to the MeiYa Rollup.

AGREEMENT

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:

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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:

“**2nd Closing**” shall have the meaning set forth in the Qimonda / MNL Share Purchase Agreement.

“**Agreement**” means this Master 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.

“**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.

“**IMI**” shall have the meaning set forth in the preamble to this Agreement.

“**IMI JV Documents**” shall have the meaning set forth in Recital D to this Agreement.

[***]

“**JDP Agreement**” means that certain Joint Development Program Agreement between NTC and Micron, dated April 21, 2008.

“**Lease and License Agreement**” means that certain Lease and License Agreement between NTC and MeiYa, dated May 13, 2008.

“**Manufacturing Fab Cooperation Agreement**” means that certain Manufacturing Fab Cooperation Agreement between Micron and NTC, dated June 6, 2008.

“**MeiYa Dissolution**” means (a) if the MeiYa Rollup is conducted as a result of clauses (a), (c) or (d) of the definition of “MeiYa Rollup,” the MeiYa Rollup, or (b) if the MeiYa Rollup is conducted as a result of clause (b) of the definition of “MeiYa Rollup,” the subsequent liquidation, dissolution or winding up of the affairs of MeiYa.

“**MeiYa Joint Venture Agreement**” shall have the meaning set forth in Section 4.4(e).

“**MeiYa JV Documents**” shall have the meaning set forth in Recital A to this Agreement.

[***]

“**MeiYa Rollup**” means the first to occur of the following events, whether through a single transaction or series of related transactions: (a) any consolidation or merger of MeiYa with or into another Person; (b) the sale of all or substantially all of MeiYa’s non-cash assets to another Person; (c) the sale of all or substantially all of MeiYa’s voting equity to any other Persons; and (d) the voluntary or involuntary liquidation, dissolution or winding up of the affairs of MeiYa.

“**MeiYa TTA 68-50**” shall have the meaning set forth in Section 4.3(a)(i) of this Agreement.

[***]

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

“**MNL**” shall have the meaning set forth in the preamble to this Agreement.

“**Mutual Confidentiality Agreement**” means that certain First Amended and Restated Mutual Confidentiality Agreement effective as of April 21, 2008 among Micron, MNL and NTC, as joined by MeiYa pursuant to the Joinder of Joint Venture Company by MeiYa, dated May 13, 2008.

“**Non-Suit Agreement**” means that certain Non-Suit Agreement between Micron and NTC, dated April 21, 2008.

“**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.

“**Restricted Activities Side Letter**” means that certain Restricted Activities Side Letter between Micron and NTC, dated April 21, 2008.

“**Qimonda**” shall have the meaning set forth in Recital B to this Agreement.

“**Qimonda B.V.**” shall have the meaning set forth in Recital B to this Agreement.

“**Qimonda / MNL Share Purchase Agreement**” shall have the meaning set forth in Recital B to this Agreement.

“**ROC**” shall have the meaning set forth in the preamble to this Agreement.

“**Taiwan**” shall have the meaning set forth in the preamble to this Agreement.

“**Technology Transfer and License Agreement**” means that certain Technology Transfer and License Agreement between Micron and NTC, dated April 21, 2008.

“**TTA 68-50**” shall have the meaning set forth in Section 5.7 of this Agreement.

1.2 Certain Interpretive Matters.

(a) Unless the context requires otherwise, (i) all references to Sections, Articles or Exhibits are to Sections, Articles or Exhibits of or to this Agreement, (ii) words in the singular include the plural and vice versa, (iii) the term “**including**” means “including without limitation,” and (iv) 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.

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(b) No provision of this Agreement will be interpreted in favor of, or against, any party hereto 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 2

MEIYA JV DOCUMENTS REMAINING IN PLACE WITHOUT MODIFICATION

2.1 **Technology Transfer and License Agreement for 68-50 nm Process Nodes.** The Technology Transfer and License Agreement for 68-50 nm Process Nodes between Micron and NTC, dated April 21, 2008, will remain in effect and intact without modification following the 2nd Closing, the MeiYa Rollup and the MeiYa Dissolution.

2.2 **Patent Assignment.** The Patent Assignment Agreement between Micron and NTC, dated June 6, 2008, will remain in effect and intact without modification following the 2nd Closing, the MeiYa Rollup and the MeiYa Dissolution.

2.3 **Micron Guaranty Agreement.** The Micron Guaranty Agreement between Micron and NTC, dated April 21, 2008, will remain in effect and intact with respect to any provisions of the MeiYa Joint Venture Agreement that then remain in effect.

ARTICLE 3

MEIYA JV DOCUMENTS TO BE AMENDED AS OF THE 2ND CLOSING

3.1 **Mutual Confidentiality Agreement.** On the date of the 2nd Closing, Micron, MNL, NTC, MeiYa and IMI will enter into a Second Amended and Restated Mutual Confidentiality Agreement, substantially in the form attached hereto as **Exhibit A**, to amend the Mutual Confidentiality Agreement.

3.2 **JDP Agreement.** On the date of the 2nd Closing, Micron and NTC will enter into an Amended and Restated Joint Development Program Agreement, substantially in the form attached hereto as **Exhibit B**, to amend the JDP Agreement.

3.3 **Restricted Activities Side Letter.** On the date of the 2nd Closing, Micron and NTC will enter into an Amended and Restated Restricted Activities Side Letter, substantially in the form attached hereto as **Exhibit C**, to amend the Restricted Activities Side Letter.

3.4 **Non-Suit Agreement.** On the date of the 2nd Closing, Micron and NTC will enter into an Amended and Restated Non-Suit Agreement, substantially in the form attached hereto as **Exhibit D**, to amend the Non-Suit Agreement.

3.5 **Technology Transfer and License Agreement.** On the date of the 2nd Closing, Micron and NTC will enter into an Amended and Restated Technology Transfer and License Agreement, substantially in the form attached hereto as **Exhibit E**, to amend the Technology Transfer and License Agreement.

3.6 **Manufacturing Fab Cooperation Agreement.** On the date of the 2nd Closing, Micron and NTC will enter into an Amended and Restated Manufacturing Fab Cooperation Agreement, substantially in the form attached hereto as **Exhibit F**, to amend the Manufacturing Fab Cooperation Agreement.

ARTICLE 4
MEIYA JV DOCUMENTS TO BE TERMINATED

4.1 MeiYa JV Documents Terminated as of the 2nd Closing.

(a) Corporate Opportunities Side Letter. The Corporate Opportunities Side Letter between Micron and NTC, dated April 21, 2008, is hereby terminated effective as of the 2nd Closing; *provided* that any provisions that, pursuant to such Corporate Opportunities Side Letter, are expressly stated to survive termination shall so survive.

4.2 MeiYa JV Document Terminated as of the MeiYa Rollup.

(a) Supply Agreement. The Supply Agreement among Micron, NTC and MeiYa, dated June 6, 2008, is hereby terminated effective as of the MeiYa Rollup, including all provisions that, pursuant to such Supply Agreement, are expressly stated to survive termination, except for Article 7 and Sections 10.3, 11.3 and 11.5 – 11.14 which shall survive such termination.

(b) Micron Assigned Employee Agreement. The Micron Assigned Employee Agreement between Micron and MeiYa, dated June 6, 2008, is hereby terminated effective as of the MeiYa Rollup; *provided* that any provisions that, pursuant to such Micron Assigned Employee Agreement, are expressly stated to survive termination shall so survive.

(c) NTC Assigned Employee Agreement. The NTC Assigned Employee Agreement between NTC and MeiYa, dated June 6, 2008, is hereby terminated effective as of the MeiYa Rollup; *provided* that any provisions that, pursuant to such NTC Assigned Employee Agreement, are expressly stated to survive termination shall so survive.

4.3 MeiYa JV Documents Terminated as of the earlier of (x) the MeiYa Rollup and (y) the date that is six (6) months following the date of the 2nd Closing.

(a) Technology Transfer Agreement for 68-50 nm Process Nodes.

(i) The Technology Transfer Agreement for 68-50 nm Process Nodes between Micron and MeiYa, dated May 13, 2008 (the “**MeiYa TTA 68-50**”), is hereby terminated effective as of the earlier of (i) the MeiYa Rollup and (ii) the date that is six (6) months following the date of the 2nd Closing; *provided* that any provisions that, pursuant to the MeiYa TTA 68-50, are expressly stated to survive termination shall so survive; and *provided, further*, that [***].

(ii) Effective as of the 2nd Closing, the [***].

(b) Technology Transfer Agreement. The Technology Transfer Agreement by and among Micron, NTC and MeiYa, dated May 13, 2008, is hereby terminated effective as of the earlier of (i) the MeiYa Rollup and (ii) the date that is six (6) months following the date of the 2nd Closing; *provided* that any provisions that, pursuant to such Technology Transfer Agreement, are expressly stated to survive termination shall so survive.

4.4 MeiYa JV Documents Terminated as of the MeiYa Dissolution.

(a) Master Agreement. The Master Agreement between Micron and NTC, dated April 21, 2008, is hereby terminated effective as of the MeiYa Dissolution.

(b) Master Agreement Disclosure Letter. The Master Agreement Disclosure Letter by Micron and agreed to by NTC, dated April 21, 2008, is hereby terminated effective as of the MeiYa Dissolution.

(c) Master Agreement Exhibits Side Letter. The Master Agreement Exhibits Side Letter by Micron and agreed to by NTC, dated April 21, 2008, is hereby terminated effective as of the MeiYa Dissolution.

(d) Litigation Side Letter. The Litigation Side Letter by Micron and agreed to by NTC, dated April 21, 2008, is hereby terminated effective as of the MeiYa Dissolution.

(e) Joint Venture Agreement. The Joint Venture Agreement between MNL and NTC, dated April 21, 2008, (the “**MeiYa Joint Venture Agreement**”) is hereby terminated effective as of the MeiYa Dissolution; *provided* that (i) any provisions that, pursuant to the MeiYa Joint Venture Agreement, are expressly stated to survive termination shall so survive, and (ii) the second and third sentences of Section 8.1(a) of the MeiYa Joint Venture Agreement shall survive and shall be amended as follows:

If any current employee of NTC and/or the Joint Venture Company who was continuously employed by NTC during the twelve-month period ending June 6, 2008 (i) permanently transfers to Inotera Memories, Inc. (“**Inotera**”) no later than December 31, 2008, and (ii) such employee has worked on a full-time basis for the Joint Venture Company and/or Inotera during the period from August 1, 2008 to August 1, 2009 (even if, prior to December 31, 2008, such work was performed as an employee of NTC and not technically as an employee of the Joint Venture Company and/or Inotera) and has not delivered to the Joint Venture Company or Inotera, or received from the Joint Venture Company or Inotera, a notice of termination, then NTC shall (x) invoice the Joint Venture Company for an amount equal to such employee’s base salary for the six (6) months prior to such transfer from NTC and (y) provide the Joint Venture Company and MNL with reasonably detailed information supporting the requirements set forth above and the invoiced amount. Within thirty (30) days of receiving such an invoice and such supporting information from NTC, the Shareholders shall use commercially reasonable efforts to cause the Joint Venture Company to pay the invoiced amounts to NTC. The Shareholders shall not cause the Joint Venture Company to make a capital reduction, dividend payment or distribution to the Shareholders if such capital reduction, dividend or distribution would cause the Joint Venture Company to have insufficient funds to pay its obligations under the immediately preceding sentence.

(f) Services Agreement. The Services Agreement between NTC and MeiYa, dated June 6, 2008, is hereby terminated effective as of the MeiYa Dissolution.

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ARTICLE 5

IMI JV DOCUMENTS TO BE ENTERED INTO AS OF THE 2ND CLOSING

5.1 Joint Venture Agreement. On the date of the 2nd Closing, MNL and NTC will enter into a Joint Venture Agreement, substantially in the form attached hereto as Exhibit G.

5.2 Micron Guaranty Agreement. On the date of the 2nd Closing, Micron and NTC will enter into a Guaranty Agreement, substantially in the form attached hereto as Exhibit H.

5.3 Facilitation Agreement. On the date of the 2nd Closing, MNL, NTC and IMI will enter into a Facilitation Agreement, substantially in the form attached hereto as Exhibit I.

5.4 Supply Agreement. On the date of the 2nd Closing, Micron, NTC and IMI will enter into a Supply Agreement, substantially in the form attached hereto as Exhibit J.

5.5 Micron Assigned Employee Agreement. On the date of the 2nd Closing, Micron and IMI will enter into a Micron Assigned Employee Agreement, substantially in the form attached hereto as Exhibit K.

5.6 NTC Assigned Employee Agreement. On the date of the 2nd Closing, NTC and IMI will enter into a NTC Assigned Employee Agreement, substantially in the form attached hereto as Exhibit L.

5.7 Technology Transfer Agreement for 68-50 nm Process Nodes. That certain Technology Transfer Agreement for 68-50 nm Process Nodes between Micron and IMI, dated October 11, 2008 (the "**TTA 68-50**"), will become effective, in accordance with its terms, on the date of the 2nd Closing.

5.8 Technology Transfer Agreement. On the date of the 2nd Closing, Micron, NTC and IMI will enter into a Technology Transfer Agreement, substantially in the form attached hereto as Exhibit M.

5.9 Corporate Opportunities Side Letter. On the date of the 2nd Closing, Micron and NTC will enter into a Corporate Opportunities Side Letter, substantially in the form attached hereto as Exhibit N.

ARTICLE 6

MISCELLANEOUS

6.1 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 hereto shall negotiate in good faith appropriate modifications to this Agreement to reflect those changes that are required by Applicable Law.

6.2 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.

6.3 Amendment. This Agreement may not be modified or amended except by a written instrument executed by, or on behalf of, each of the parties hereto, except that the provisions relating to (a) the continuance, amendment or termination of the MeiYa JV Documents referenced in Articles 2, 3 and 4 may be modified or amended by a written instrument executed by, or on behalf of, all of the Old JV Parties that are parties thereto and (b) the entering into the IMI JV Documents referenced in Article 5 may be modified or amended by a written instrument executed by, or on behalf of, all of the New JV Parties that are contemplated to be parties thereto.

6.4 Entire Agreement. This Agreement, together with the Exhibits hereto and the agreements and instruments expressly provided for herein, constitute the entire agreement of the parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, between the parties hereto with respect to the subject matter hereof.

6.5 Choice of 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.

6.6 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 Agreement shall be brought in the Taipei District Court, located in Taipei, Taiwan, and each of the parties hereto 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.

6.7 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.

6.8 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]

DLI-6217916v6

IN WITNESS WHEREOF, this Agreement has been duly executed by, and on behalf of, the parties hereto as of the date first written above.

MICRON TECHNOLOGY, INC.

By: /s/ D. Mark Durcan

D. Mark Durcan

President and Chief Operating Officer

**THIS IS A SIGNATURE PAGE FOR THE MASTER AGREEMENT ENTERED
INTO AMONG MICRON, MNL, NTC, MEIYA AND IMI**

DLI-6217916v6

MICRON SEMICONDUCTOR B.V.

By: /s/ Thomas L. Laws
Thomas L. Laws
Managing Director A

By: /s/ Stefan Boermans / /s/ Clemens van den Broek
Name: Stefan Boermans / Clemens van den Broek
Title Trust International Management(T.I.M.) B.V.
Managing Director B

**THIS IS A SIGNATURE PAGE FOR THE MASTER AGREEMENT ENTERED
INTO AMONG MICRON, MNL, NTC, MEIYA AND IMI**

NANYA TECHNOLOGY CORPORATION

By: /s/ Jih Lien
Jih Lien
President

**THIS IS A SIGNATURE PAGE FOR THE MASTER AGREEMENT ENTERED
INTO AMONG MICRON, MNL, NTC, MEIYA AND IMI**

DLI-6217916v6

MEIYA TECHNOLOGY CORPORATION

By: /s/ David Tsou
Name: David Tsou
Title: Supervisor

**THIS IS A SIGNATURE PAGE FOR THE MASTER AGREEMENT ENTERED
INTO AMONG MICRON, MNL, NTC, MEIYA AND IMI**

DLI-6217916v6

INOTERA MEMORIES, INC.

By: /s/ Joseph Hsieh
Name: Joseph Hsieh
Title: Supervisor

**THIS IS A SIGNATURE PAGE FOR THE MASTER AGREEMENT ENTERED
INTO AMONG MICRON, MNL, NTC, MEIYA AND IMI**

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

NTC/MICRON CONFIDENTIAL

JOINT VENTURE AGREEMENT

This JOINT VENTURE AGREEMENT, dated this 26th day of November, 2008, is made and entered into by and between MICRON SEMICONDUCTOR B.V. (hereinafter “**MNL**”), a private limited liability company organized under the laws of the Netherlands and NANYA TECHNOLOGY CORPORATION Nanya Technology Corporation [Translation from Chinese] (hereinafter “**NTC**”), a company incorporated under the laws of the Republic of China (“**ROC**” or “**Taiwan**”) (MNL 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 (hereinafter “**Infineon**”), have previously formed Inotera Memories, Inc. Inotera Memories Inc. [Translation from Chinese], a company incorporated under the laws of the ROC (the “**Joint Venture Company**”).

B. Infineon subsequently assigned to Qimonda AG, a company incorporated under the laws of Germany (hereinafter “**Qimonda**”), all of Infineon’s Shares in the Joint Venture Company.

C. In accordance with that certain Share Purchase Agreement, dated October 11, 2008 (the “**Qimonda/MNL Share Purchase Agreement**”), by and between 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 is acquiring from Qimonda and Qimonda B.V. Shares in the Joint Venture Company.

D. The JV Parties are now entering into this Agreement to set forth certain agreements regarding the ownership, governance and operation of the Joint Venture Company.

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:

“**2nd Closing**” shall have the meaning set forth in the Qimonda/MNL Share Purchase Agreement.

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

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“**Affiliate**” means, with respect to any specified Person, any other Person that, directly or indirectly, including through one or more intermediaries, controls, 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.

“**Annual Budget**” shall have the meaning set forth in Section 7.5(a)(ii) of this Agreement.

“**Annual Business Plan**” shall have the meaning set forth in Section 7.5(a)(i) of this Agreement.

“**Answer Notice**” shall have the meaning set forth in Section 7.3(b) of 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.

“**Articles of Incorporation**” means the Articles of Incorporation of the Joint Venture Company in the form and substance as Exhibit A attached to this Agreement, and as amended from time to time.

“**Baseline Flow**” shall have the meaning set forth in Section 7.2(b)(v) of this Agreement.

“**Board of Directors**” means the board of directors of the Joint Venture Company.

“**Boundary Conditions**” means, with respect to any fab, the Trench DRAM Boundary Conditions and Stack DRAM Boundary Conditions.

“**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**” means any Annual Business Plan.

“**Buyout Notice**” 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 Subsidiary**” shall have the meaning set forth in Section 13.2 of this Agreement.

“**Chairman**” means the Chairman of the Board of Directors.

“**Change Notice**” shall have the meaning set forth in Section 7.3(b) of this Agreement.

“**Closing**” means the consummation of the 2nd Closing.

“**Closing Date**” means the date on which the Closing occurs. For purposes of this Agreement and the other agreements and instruments referenced herein, the Closing shall be deemed to have occurred at 12:01 a.m. in Taipei, Taiwan on such date.

“**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 NTC or a Subsidiary of 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 the Joint Venture Company’s output), bid terms of the foregoing type and such similar information as is specifically identified electronically or in writing to the Joint Venture Company by Micron or a Subsidiary of Micron, on the one hand, and NTC or a Subsidiary of 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 Agreement**” shall have the meaning set forth in Section 15.13(a) of this Agreement.

“**Control**” (whether or not capitalized) 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 [***] 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.

“**COSL**” shall have the meaning set forth in Section 11.6 of this Agreement.

“**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.

“**Defaulting JV Party**” shall have the meaning set forth in Section 12.4 of this Agreement.

“**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.

“**Design SOW**” means any [***].

“Dilutive Transaction” means a transaction in which the Joint Venture Company issues Shares and a JV Party does not purchase 100% of the Shares that such JV Party would be entitled to purchase with respect to such transaction as a result of fully exercising its pre-emptive right with respect to the issuance of the Shares; provided, however, that such transaction shall not be a Dilutive Transaction if neither JV Party exercises any of its pre-emptive rights with respect to such issuance of Shares.

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

“DRAM Design” means an Trench DRAM Designs or Stack DRAM Design.

“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 date that is two (2) years after the later of (i) the sale, exchange, transfer, or disposal of all of the ordinary shares of the Joint Venture Company owned by one JV Party and its Subsidiaries to the other JV Party, its Affiliates or to a Third Party that was not in contravention of the Joint Venture Agreement and (ii) the termination of the JDP Agreement.

“Equity Interest” means a JV Party’s percentage ownership of the Shares as determined by dividing the number of Shares owned by such JV 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.

“Executive Vice President” shall have the meaning set forth in Section 5.4(b) of this Agreement.

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

“Fair Value” means (i) if the Joint Venture Company is listed on the Taiwan Stock Exchange, [***] of the Shares immediately prior to the date of the Exercise Notice or the Buyout Notice, as applicable; or (ii) if the Joint Venture Company is not then listed on the Taiwan Stock Exchange, the fair value immediately prior to the date of the Exercise Notice or Buyout Notice, as applicable, as determined by independent appraisers selected as follows: each JV Party 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 of the Joint Venture Company), and [***] 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.

“**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).

“**IMI/Qimonda Supply Agreement**” shall have the meaning set forth in Section 7.2(b)(iv) of this Agreement.

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

“**Initiating JV Party**” shall have the meaning set forth in Section 7.3(b) of this Agreement.

“**JDP Agreement**” means that certain Joint Development Program Agreement between NTC and Micron, dated as of April 21, 2008, as amended.

“**JDP Committee**” means the committee formed and operated by Micron and NTC to govern the performance of Micron and NTC under the JDP Agreement in accordance with the JDP Committee Charter.

“**JDP Committee Charter**” means the charter attached as Schedule 2 to the JDP Agreement.

“**Joint Venture Company**” shall have the meaning set forth in the Recitals to this Agreement.

“**Joint Venture Documents**” means the documents identified on Schedule A to this Agreement.

“**Joint Venture Reportable Events**” shall have the meaning set forth in Section 10.3 of this Agreement.

“**JV Party**” shall have the meaning set forth in the preamble to this Agreement.

“**Manufacturing Capacity**” means Trench DRAM Manufacturing Capacity and Stack DRAM Manufacturing Capacity.

“**Manufacturing Committee**” shall have the meaning set forth in Section 7.2(b)(i) of this Agreement.

“**Manufacturing Plan**” shall have the meaning set forth in Section 7.2(c) of this Agreement.

“**Maximum Output Percentage Adjustment**” means the [***].

“**Micron**” shall have the meaning set forth in the Recitals to this Agreement.

“**Micron Assigned Employee Agreement**” means that certain Micron Assigned Employee Agreement between Micron and the Joint Venture Company, dated as of the date of this Agreement.

[***]

“**Minimally Restored Position**” has the meaning set forth in Section 11.5(c) of this Agreement.

“**MNL**” shall have the meaning set forth in the preamble to this Agreement.

“**MTT**” shall mean Micron Technology Asia Pacific, Inc., an Idaho corporation.

“**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.

“**Non-compliant JV Party**” shall have the meaning set forth in Section 13.1(a) of this Agreement.

“**Non-Defaulting JV Party**” shall have the meaning set forth in Section 12.5 of this Agreement.

“**Non-SOW Product**” means a class of Stack DRAM Product that does not result from a SOW.

“**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 Assigned Employee Agreement” means that certain NTC Assigned Employee Agreement between NTC and the Joint Venture Company, dated as of the date of this Agreement.

[***]

“Offered Shares” means the Shares as defined in Section 9.3(a) of this Agreement.

“Option Period” shall have the meaning set forth in Section 9.3(b) of this Agreement.

“Other JV Party” shall have the meaning set forth in Section 7.3(b) of this Agreement.

“Output Percentage” means [***].

“Output Percentage Adjustment” means, [***].

“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.

“Plastics” shall have the meaning set forth in Section 11.5(b) of this Agreement.

“President” shall have the meaning set forth in Section 5.4(a) of this Agreement.

“Process Node” means [***].

“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 Party” 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.

“**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, promulgated on December 26, 1929, and as last amended on February 3, 2006.

“**ROC Securities Exchange Law**” means the Securities and Exchange Law of the ROC, promulgated on April 30, 1968, and as last amended on May 30, 2006.

“**Sale Offer**” shall have the meaning set forth in Section 9.3(a) of this Agreement.

“**Share Decrease Percentage**” means [***].

“**Share Disposition**” shall have the meaning set forth in Section 7.3(b) 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 the Joint Venture Company, each having a par value of [***].

“**SOW**” means a statement of the work that describes research and development work to be performed under the JDP Agreement and that has been adopted by the JDP Committee pursuant to Section 3.2 of the JDP Agreement.

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

“**Stack DRAM Boundary Conditions**” means, with respect to any fab, a requirement that, at any point in time:

[***]

“**Stack DRAM Design**” means, with respect to a Stack DRAM Product, all of the design elements, components, specifications and information required to manufacture the subject Stack DRAM Product, including some or all of the elements, components, specifications and information listed on Schedule 3 to the JDP Agreement or others.

“**Stack DRAM Manufacturing Capacity**” means, with respect to each of the Joint Venture Company’s fabs, the total work minutes available for each Process Node to manufacture Stack DRAM Products at such fab.

“**Stack DRAM Module**” means one or more Stack DRAM Products in a JEDEC-compliant package or module (whether as part of a SIMM, DIMM, multi chip package, memory card or other memory module or package).

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“**Stack DRAM Product**” means any memory comprising Stack DRAM, whether in die or wafer form.

“**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.

“**Supply Agreement**” means that certain Supply Agreement among NTC, Micron and the Joint Venture Company, dated as of the date 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.

“**Technology Transfer Agreement**” means that certain Technology Transfer Agreement among NTC, Micron and the Joint Venture Company, dated as of the date of this Agreement.

“**Third Party**” means any Person other than NTC, Micron, the Joint Venture Company 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.

“**Transition Period**” shall have the meaning set forth in Section 2.1(b) of this Agreement.

“**Trench Contract Process**” means the 90nm and 70nm trench based DRAM process technology previously transferred to the Joint Venture Company under that certain Know How Transfer Agreement among the Joint Venture Company, NTC and Qimonda, dated November 13, 2002, 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 Boundary Conditions**” means, with respect to any fab, a requirement that, at any point in time:

[***]

“**Trench DRAM Designs**” means, with respect to a Trench DRAM Product, the corresponding design components, materials and information.

“**Trench DRAM Manufacturing Capacity**” means, with respect to each of the Joint Venture Company’s fabs, the total work minutes available for each Process Node to manufacture Trench DRAM Products at such fab.

“**Trench DRAM Products**” means trench based dynamic random access memory products manufactured by the Joint Venture Company in accordance with the Trench Contract Process.

“**TTA 68-50**” means that certain Technology Transfer Agreement for 68-50 nm Process Nodes between Micron and the Joint Venture Company dated as of October 11, 2008.

“**TTLA**” shall have the meaning set forth in Section 11.5(a) of this Agreement.

[***] 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, either 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.

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(c) For purposes of the definition of Boundary Conditions, the following fabs collectively shall constitute a single fab: (i) the existing fabs commonly referred to as “Fab 1” and “Fab 2” at Hwa Ya Technology Park, Taoyuan, Taiwan, and (ii) the fab leased as of the date of this Agreement by MeiYa Technology Corporation MeiYa Technology Corporation [Translation from Chinese], a company incorporated under the laws of the ROC, and located at Hwa Ya Technology Park, Taoyuan, Taiwan, so long as such fab is operated by the Joint Venture Company.

ARTICLE 2

THE JOINT VENTURE COMPANY

Section 2.1 General Matters.

(a) Name. The JV Parties shall use best efforts to cause the Joint Venture Company to be named Inotera Memories Inc. [Translation from Chinese] in Chinese and “**Inotera Memories, Inc.**” in English. The JV Parties acknowledge and agree to use best efforts to cause the Joint Venture Company to be continued as a company-limited-by-shares under the laws of the ROC.

(b) Purpose. During the period commencing on the date hereof and ending on the date that the Joint Venture Company’s fabs are fully converted (as determined based on the delivery of the final Trench DRAM Product manufactured by the Joint Venture Company) from the manufacture of Trench DRAM Products to the manufacture of Stack DRAM Products (the “**Transition Period**”), the JV Parties shall use best efforts to cause the purpose of the Joint Venture Company to be the manufacture and sale of certain Trench DRAM Products exclusively for and to Micron, NTC and Qimonda and Stack DRAM Products exclusively for and to Micron and NTC. After the Transition Period, the JV Parties shall use best efforts to cause the purpose of the Joint Venture Company to be the manufacture and sale of certain Stack DRAM Products exclusively for and to Micron and NTC; and the entry of, or engagement in, any such lawful transactions or activities in furtherance of the foregoing purpose.

(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 shall use best efforts to cause the registered business scope of the Joint Venture Company to be as set forth in its business license, other incorporation documents and the Articles of Incorporation, all as mutually agreed upon by the JV Parties.

(d) Principal Place of Business. The JV Parties shall use best efforts to cause the registered address and the principal place of business of the Joint Venture Company to be at Hwa-Ya Technology Park, Taoyuan, Taiwan, ROC, unless the Board of Directors changes the registered address or the principal place of business of the Joint Venture Company to such other place as the Board of Directors may from time to time determine. The Joint Venture Company 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 between the JV Parties to the extent permitted under the Applicable Laws. The JV Parties shall exercise all rights available to them to give effect to the terms of this Agreement to the extent permissible under the Applicable Laws and to take such reasonable steps to amend the Articles of Incorporation as soon as practicable to the extent necessary to remove any such conflict or inconsistency.

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Section 2.3 Maintenance of Joint Venture Company. The JV Parties shall use best efforts to cause the Board of Directors, or officers of the Joint Venture Company, 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 the Joint Venture Company as the Board of Directors reasonably considers necessary or appropriate under the Applicable Laws so as to ensure (a) the continuation of the Joint Venture Company 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 either JV 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 either JV 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 either JV 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 taking such action, in addition to complying with any other applicable notice provisions under this Agreement, shall promptly notify the other JV Party 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 both JV 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 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;

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(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 either JV Party, the Joint Venture Company, or any of their respective Subsidiaries; (ii) terminate existing relationships and contractual rights and obligations of either JV Party, the Joint Venture Company or any of their respective Subsidiaries; (iii) terminate any relevant joint venture or other arrangement; or (iv) effectuate any other change or restructuring of either JV Party or the Joint Venture Company (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 either JV Party in connection with proceedings under or relating to the applicable Regulatory Law, consult and cooperate with one another, and consider in good faith the views of one another, in connection with any such analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals, and provide one another 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 either JV Party or its respective Affiliates, or the Joint Venture Company, 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 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.

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ARTICLE 3

CAPITALIZATION; CONTRIBUTION OF CAPITAL

Section 3.1 Authorized Capital. In accordance with Section 6.5, the JV Parties shall use best efforts to cause the authorized capital of the Joint Venture Company to be amended from time to time, as may be necessary or desirable to consummate the transactions contemplated herein and in accordance with the Applicable Laws of the ROC.

Section 3.2 Capital Contributions.

(a) No Obligation. Unless otherwise agreed by the JV Parties in writing, neither JV Party shall be obligated to make any contribution of capital to the Joint Venture Company.

(b) Future Cash Requirements. Until the second anniversary of the Closing, the JV Parties shall use commercially reasonable efforts consistent with their fiduciary duties to the Joint Venture Company, to cause the Joint Venture Company to fund future cash requirements through cash flow generated by operations of the Joint Venture Company or external debt financing rather than the issuance of Shares or other equity or equity-linked securities of the Joint Venture Company.

Section 3.3 Unilateral Purchase of Shares. Except as otherwise provided herein, MNL shall not, and shall not permit Micron or its Subsidiaries to, and NTC shall not, and shall not permit its Subsidiaries to, directly or indirectly acquire Shares or any other equity-linked securities of the Joint Venture Company from any Person other than the Joint Venture Company, without the prior written consent of the other JV Party. MNL and NTC shall use their respective best efforts to prevent the Joint Venture Company from issuing Shares or any other equity-linked security of the Joint Venture Company, directly or indirectly, to an Affiliate of MNL or NTC without the prior written consent of both JV Parties. If an Affiliate of MNL or of NTC acquires Shares or any other equity-linked security of the Joint Venture Company, whether from the Joint Venture Company or otherwise (except as a result of a Permitted Transfer as contemplated by Section 9.2), the JV Parties shall, notwithstanding anything to the contrary in Sections 5.1(b) or (c), use their respective commercially reasonable efforts to cause the directors on the Board of Directors to be allocated between them, consistent with the principles set forth in Sections 5.1(b) and (c), as if the Shares or equity-linked securities owned by such Affiliates were owned one half by MNL and one half by NTC (and treating, for purposes of this sentence, any director whose election was controlled by an Affiliate of a JV Party as being a director designated by such JV Party). Notwithstanding the foregoing, if the JV Parties fail to achieve the foregoing result after using such commercially reasonable efforts, no JV Party shall be in breach of this section or have any liability for such failure.

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ARTICLE 4**BANK LOANS**

If the Board of Directors shall at any time determine that there is a need for the Joint Venture Company to obtain external financing, the JV Parties will assist the Joint Venture Company to seek and obtain commercial loans or other financing arrangements from banks and other financial institutions on competitive market terms and otherwise as the Joint Venture Company may reasonably require. None of the JV 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 the Joint Venture Company, unless specifically agreed in writing by such JV Party (or its duly authorized representative).

ARTICLE 5**MANAGEMENT OF THE JOINT VENTURE COMPANY****Section 5.1 Board of Directors.**

(a) Power and Authority. The JV 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 the Joint Venture Company. The JV 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. The JV Parties shall use best efforts to cause the Articles of Incorporation to provide for the Joint Venture Company to have a Board of Directors consisting of twelve (12) directors (provided that the JV Parties shall use best efforts to reduce such number for each director withdrawn in accordance with Section 5.1(b)(iv)). The JV Parties shall use best efforts to cause the directors to be designated and elected as follows (subject, and giving effect, to any prior withdraw of one or more directors in accordance with Section 5.1(b)(iv)):

[***]

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(c) Agreement to Vote.

(i) The JV Parties agree to vote, in any meeting of the shareholders where directors are elected, in a coordinated manner, to elect all of the Persons designated by the JV Parties in accordance with Section 5.1(b) above. As soon as practicable after the Closing, the JV Parties shall use their best efforts to cause a Shareholders' Meeting in order to elect the Persons designated by MNL pursuant to Sections 5.1(b)(i) and (iii), as directors. From the Closing until the date that the Persons designated by MNL pursuant to Sections 5.1(b)(i) and (iii) are first elected as directors of the Joint Venture Company following the Closing, NTC shall not take or omit to take, and shall use best efforts to prohibit the Joint Venture Company from taking or omitting to take, any action or inaction, as applicable, that would require the approval of the Board of Directors, unless NTC first obtains the prior written consent of MNL for the Joint Venture Company to take or omit to take such action.

(ii) If for any reason the JV Parties shall be unable to elect twelve (12) Persons (or such lesser number of Persons as is applicable after taking into account the application of Section 5.1(b)(iv)) to be their representatives to serve as directors pursuant to Section 5.1(b), the JV 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 as directors on the Board of Directors may be removed or replaced for any reason by the JV Party 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 director on the Board of Directors, the JV Party that designated such representative shall be entitled to designate another Person to fill such vacancy, and the JV Parties shall use best efforts to have such replacement elected as a director.

(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 shall use best efforts to cause or affect 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 the Joint Venture Company within twenty (20) days of each meeting.

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(g) Proxy and Video Conference. The JV Parties shall use best efforts to cause the Joint Venture Company 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 shall use best efforts to cause the presence of at least [***] of the directors in office, 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 shall use best efforts to cause all actions, determinations or resolutions of the Board of Directors to require the affirmative vote of a [***] 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 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 and Executive Vice President of the Joint Venture Company nominated by the Chairman, and appointing or removing any Vice Presidents of the Joint Venture Company;

(ii) approving or amending any Business Plan, including the Annual 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 the Joint Venture Company or issuing equity-linked securities;

(iv) determining long-term policies of the Joint Venture Company, including substantial change in the organizational structure and business operation of the Joint Venture Company;

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(v) determining employment terms, including compensation packages of the President, the Executive Vice President, Vice Presidents and assistant Vice Presidents of the Joint Venture Company;

(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 [***] individually or [***] 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, the Joint Venture Company's assets;

(xi) issuing any debt securities of the Joint Venture Company;

(xii) entering into an agreement for the purchase, transfer, sale or any other disposal of assets valued at an amount greater than [***] other than transfers, sales or dispositions of assets in the ordinary course of business of the Joint Venture Company;

(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 the Joint Venture Company;

(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 the Joint Venture Company for approval;

(xix) submitting any matters to the shareholders of the Joint Venture Company for consideration or approval as may be required by the law;

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(xx) entering into, modifying, extending or terminating any one-time service or purchase of goods agreement in the amount of more than [***] or any long-term service or purchase agreement for goods between the Joint Venture Company and a shareholder holding more than 10% of the issued share capital of the Joint Venture Company, or an Affiliate of such shareholder;

(xxi) redeeming or repurchasing Shares;

(xxii) deciding other important matters related to the Joint Venture Company that arise other than in the ordinary course of business.

Section 5.2 Chairman and Vice-Chairman.

(a) Chairman. The JV Parties shall use best efforts to cause the Chairman of the Board of Directors to be a director designated by NTC, subject to the consent of MNL, which consent shall not be unreasonably withheld. The JV 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 shall use best efforts to cause the Chairman to not have a second or casting vote.

(b) Vice-Chairman. The JV Parties shall use best efforts to cause the Articles of Incorporation to be amended to provide that there shall be a Vice-Chairman of the Board of Directors who shall be a director designated by MNL, subject to the consent of NTC, which consent shall not be unreasonably withheld. The JV 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 shall use best efforts to cause meetings of the Board of Directors to be convened by the Chairman. The JV Parties shall use best efforts to cause each director of the Joint Venture Company to have the right to request the Chairman to convene a meeting of the Board of Directors indicating the proposed agenda. 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 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.

Section 5.3 Supervisors.

(a) Number of Supervisors. The JV Parties shall use best efforts to cause the Articles of Incorporation to provide for the Joint Venture Company to have four (4) supervisors. The JV Parties agree to vote, in any meeting of the shareholders where supervisors are elected, in a coordinated manner, to elect as supervisors two (2) Persons designated by MTT and two (2) Persons designated by Pei Jen Co., Ltd. From and after the Closing, MNL shall cause MTT, and NTC shall cause Pei Jen Co., Ltd., to hold, respectively, a number of Shares that is equal to or greater than one-half (1/2) of the minimum number of Shares required to be held by all supervisors of the Joint Venture Company in accordance with Applicable Laws.

(b) Agreement to Vote. The JV Parties agree to vote, in any meeting of the shareholders where supervisors are elected, in a coordinated manner, to elect all of the Persons designated by the JV Parties in accordance with Section 5.3(a) above. As soon as practicable after the Closing, the JV Parties shall elect the two (2) Persons designated by MNL, and the two (2) Persons designated by NTC, to serve as supervisors of the Joint Venture Company.

(c) Removal and Replacement. The JV Parties shall use best efforts to provide that any of the supervisors may be removed or replaced for any reason by the JV Party that designated him or her. If any supervisor is so removed or replaced or otherwise ceases to serve as a supervisor, the JV Parties shall use best efforts to cause the JV Party that designated such supervisor to be entitled to designate another Person to fill such vacancy.

(d) Compensation. The JV 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 shall use best efforts to cause the supervisors to not be concurrently employed by the Joint Venture Company in any other capacity.

Section 5.4 President and Executive Vice President.

(a) President. The JV Parties shall use best efforts to cause the Articles of Incorporation to provide for the Joint Venture Company 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 the Joint Venture Company as may be assigned or delegated by the Board of Directors from time to time. [***]

(b) Executive Vice President. The JV Parties shall use best efforts to cause the Articles of Incorporation to provide for the Joint Venture Company to have an executive vice president (the “**Executive Vice President**”), who shall also report to the Board of Directors and serve at its pleasure. The Executive Vice President shall work with and assist the President in executing the daily operation and management responsibilities of the Joint Venture Company and shall have such other responsibilities as may be assigned or delegated by the Board of Directors from time to time. [***]

(c) Termination and Vacancy. The JV 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 Executive Vice President 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, the JV Parties shall use best efforts to cause the JV Party that nominated the President or the Executive Vice President, 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 the Joint Venture Company, the JV Parties shall use best efforts to cause the President and the Executive Vice President to have the authority to, among other things:

(i) propose the annual budget and business plan of the Joint Venture Company;

(ii) approve capital expenditures of the Joint Venture Company of [***] or less in a single event, or an aggregate of [***] or less in any

Fiscal Quarter;

(iii) approve borrowing and lending of the Joint Venture Company and dispositions of assets of the Joint Venture Company, in each case less than [***]; and

(iv) execute annual budgets of the Joint Venture Company approved by the Board of Directors.

(e) Work as a Team. The President and the Executive Vice President shall work as a team in executing their duties and responsibilities.

Section 5.5 Other Officers. The JV Parties shall use best efforts to allow the President and the Executive Vice President to appoint, subject to the approval of the Board of Directors, and be assisted by such other officers of the Joint Venture Company as the President and the Executive Vice 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 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 shall use best efforts to allow the Board of Directors to, from time to time, also appoint, and assign titles to, other officers of the Joint Venture Company, 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 shall use best efforts to cause the annual meetings of the shareholders of the Joint Venture Company 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 shall use best efforts to cause special meetings of the shareholders of the Joint Venture Company 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 shall use best efforts to cause the presence of the shareholders of the Joint Venture Company representing [***] or more of the issued and outstanding Shares of the Joint Venture Company to be necessary and sufficient to constitute a quorum for the purpose of taking action at any Shareholders' Meeting of the Joint Venture Company. The JV 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 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 shall use best efforts to cause all actions, determinations or resolutions of the shareholders at any Shareholders' Meeting of the Joint Venture Company to require the affirmative vote of [***] 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 shall use best efforts to cause each of the following actions to require the approval of the shareholders of the Joint Venture Company 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 the Joint Venture Company;
- (f) approval of surplus earning distribution or loss offset proposals;

(g) any merger, consolidation or other business combination to which the Joint Venture Company is a party, or any other transaction to which the Joint Venture Company is a party (other than where the Joint Venture Company is merged or combined with or consolidated into a Wholly-Owned Subsidiary of the Joint Venture Company), resulting in (i) a change of control of the Joint Venture Company, 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 the Joint Venture Company;

- (h) voluntary submission by the Joint Venture Company to receivership, bankruptcy or any similar status;
- (i) liquidation or dissolution of the Joint Venture Company; and
- (j) other actions reserved to the determination of the shareholders of the Joint Venture Company by the ROC Company Law.

ARTICLE 7

OPERATIONS

Section 7.1 Manufacturing Facility; Fab Equipment.

(a) Fab Equipment. Subject to the mutual agreement of the JV Parties, the Joint Venture Company may purchase, at fair market value, NTC's idle equipment that is suitable for use in connection with the manufacturing of Stack DRAM Products.

(b) Upgrade and Enhancements. [***]

Section 7.2 Manufacturing Operations.

(a) Front-End Manufacturing Operations. The JV Parties shall use best efforts to cause the Joint Venture Company to operate, at all times, within the Boundary Conditions.

(b) Manufacturing Committee.

(i) The JV Parties shall jointly establish a manufacturing committee (the "**Manufacturing Committee**"), [***]. The members of the Manufacturing Committee shall serve at the pleasure of the JV Party appointing them and may be removed from the Manufacturing Committee and replaced by such JV Party at any time with or without cause.

(ii) NTC's members of the Manufacturing Committee shall be employees of NTC, and MNL's members of the Manufacturing Committee shall be employees of Micron, in each case who are responsible for product loading and planning decisions and who can coordinate the loading of product at the Joint Venture Company level.

(iii) The JV Parties shall use best efforts to cause the Manufacturing Committee to be responsible for [***]. In reaching such decisions, the Manufacturing Committee may take advice and input from such sources as it deems appropriate.

(iv) In the event that the members of the Manufacturing Committee cannot agree on product loading decisions, then the Manufacturing Committee will permit, with respect to each Process Node, [***].

(v) The allocation of Trench DRAM Manufacturing Capacity shall be based on [***] ("**Baseline Flow**"). On a quarterly basis, or as otherwise determined by the Manufacturing Committee, the Manufacturing Committee shall determine the Baseline Flow. If, during any quarter, the Manufacturing Committee cannot agree on a Baseline Flow, [***].

(vi) Requests of Micron and NTC for products or product mixes different from the pre-planned Baseline Flow with respect to a fab shall be honored, except to the extent honoring such request would lead to wafer starts for the non-Baseline Flow products at such fab resulting in Micron or NTC receiving more than the Trench DRAM Manufacturing Capacity and or Stack DRAM Manufacturing Capacity allocated to such Person under the current Baseline Flow for such fab. To the extent that both Micron and NTC request changes in products or product mixes at a given fab that result in [***], the Manufacturing Committee shall re-determine the allocation of Trench DRAM Manufacturing Capacity and Stack DRAM Manufacturing Capacity based on [***], which shall then be the basis for its loading plans with respect to such fab.

(vii) The JV Parties shall use best efforts to cause the Joint Venture Company to ensure that Trench DRAM Manufacturing Capacity and Stack DRAM Manufacturing Capacity at each fab is allocated as provided for in this Section 7.2.

(viii) The Manufacturing Committee shall meet at such times as may be helpful or necessary for the efficient operation of the Company but in no event less than monthly. The Manufacturing Committee shall provide an annual report to the Joint Venture Company for use in a Business Plan and the Manufacturing Plan.

(c) Manufacturing Plan. The JV Parties shall use best efforts to cause the Joint Venture Company to prepare an annual manufacturing plan (the “**Manufacturing Plan**”) under the direction of the President, with input from the Executive Vice President, the JV Parties and the Manufacturing Committee (or such other persons or committees charged with such responsibility from time to time by the JV Parties). The Manufacturing Plan shall seek to optimize the efficiency and output of the Joint Venture Company and shall be updated monthly by the Manufacturing Committee. 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 Output Rights and Obligations.

(a) Supply Agreement. Effective as of the Closing, Micron and NTC will enter into the Supply Agreement with the Joint Venture Company. No amendment or modification of the terms or conditions of the Supply Agreement shall be made without prior written notice to and the prior written consent of NTC and Micron.

(b) Output Percentage. [***].

Section 7.4 Marketing and Sales. With respect to DRAM Products purchased from the Joint Venture Company, each of Micron and NTC 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 agree that appropriate safeguards shall be put in place by each JV Party, and the JV Parties shall use best efforts to cause the Joint Venture Company 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) Annual Business Plan; Annual Budget.

(i) For each Fiscal Year, the JV Parties shall use best efforts to cause the President, in consultation with the Executive Vice President and with input from the Manufacturing Committee or such other relevant Persons or committees charged by the JV Parties with responsibility for such matters from time to time, to prepare and submit to the Board of Directors for approval, an annual business plan (the “**Annual Business Plan**”) [***].

(ii) The Annual Business Plan shall include an annual budget (“**Annual Budget**”) which shall cover [***].

(iii) The JV Parties shall use best efforts to cause the Annual Business Plan, including the Annual Budget, to not be amended, updated, modified or superseded without the approval of the Board of Directors.

(b) Transition Supply Obligation. With respect to a Share Disposition of all (but not less than all) of the Shares then owned by a JV Party as contemplated under Sections 9.3, 12.3, 12.6 and 13.1, the JV Party that remains a shareholder of the Joint Venture Company after such Share Disposition shall, [***].

ARTICLE 8

EMPLOYEE MATTERS

Section 8.1 Employees.

(a) Employees of the Joint Venture Company. The JV Parties shall use best efforts to cause the Joint Venture Company to employ its own personnel, including administrative staff, operators, technicians and engineers, and, except with respect to employees assigned to the Joint Venture Company pursuant to the Micron Assigned Employee Agreement or NTC Assigned Employee Agreement, to be their exclusive employer.

(b) Hiring. The JV Parties shall use best efforts to cause the number, position and compensation of the employees of the Joint Venture Company to be as determined by the President in consultation with the Executive Vice President, consistent with the Annual 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 shall use best efforts to cause, subject to the approval of the Board of Directors, the Joint Venture Company to put in place and implement such employee policies, programs and benefits as determined by the President in consultation with the Executive Vice President or as may otherwise be required by Applicable Laws.

Section 8.2 Assigned Employees.

(a) Micron Assigned Employee Agreement. Certain employees of Micron may be assigned or transferred to work at or with the Joint Venture Company. In connection therewith, Micron and the Joint Venture Company shall enter into the Micron Assigned Employee Agreement.

(b) NTC Assigned Employee Agreement. Certain employees of NTC may be assigned or transferred to work at or with the Joint Venture Company. In connection therewith, NTC and the Joint Venture Company shall enter into the NTC Assigned Employee Agreement.

Section 8.3 Employment and Service-Related Forms. The JV Parties shall use best efforts to cause the Joint Venture Company 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 the Joint Venture Company, (b) compliance with Applicable Laws, (c) other matters related to the delivery of services to, or employment of such Person by, the Joint Venture Company, (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) the Joint Venture Company shall be transferred and assigned to the Joint Venture Company or its designee, as appropriate.

Section 8.4 [***]

(a) [***]. During the [***], MNL shall not, and shall cause Micron and its Affiliates not to, without the prior written consent of NTC, [***], provided that such Affiliate of Micron does not do so with information or assistance provided by Micron, [***].

(b) [***]. During the [***], NTC shall not, and shall cause its Affiliates not to, without the prior written consent of MNL and Micron, [***], provided that such Affiliate of NTC does not do so with information or assistance provided by NTC, [***].

ARTICLE 9

TRANSFER RESTRICTIONS

Section 9.1 Restrictions on Transfer.(a) Transfer Prohibitions.

(i) A JV Party shall in no event sell, exchange, transfer, dispose of, encumber, pledge, mortgage or hypothecate (each a “**Transfer**”), whether directly or indirectly, any part of the Shares of the Joint Venture Company owned by it to any Person if immediately after such Transfer such JV Party’s Equity Interest would be below [***].

(ii) The JV Parties agree that:

(A) MNL shall in no event Transfer any part of the Shares of the Joint Venture Company owned by it to a [***] without the prior written consent of NTC; and

(B) NTC shall in no event Transfer any part of the Shares of the Joint Venture Company owned by it to a [***] 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, 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. [***].

(c) Transferee to be Bound. Notwithstanding consent being given by one JV Party to the other JV Party for the Transfer of any part of the Shares of the Joint Venture Company owned by the transferring JV Party to any Person, the transferring JV Party shall cause and procure the transferee to agree in writing to perform and be bound by all duties and obligations of the transferring JV Party, including the any transfer restrictions under Section 9.1 of this Agreement, except where the Transfer is conducted on, and through the normal, 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.

Section 9.2 Permitted Transfers. Notwithstanding Section 9.1, a JV Party may Transfer all (but not less than all) of its shares in the Joint Venture Company to [***] (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, including the obligations set forth in this Agreement and any Joint Venture Documents to which the transferring JV Party is a party;
- (b) the transferring JV Party 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) [***]; and
- (d) at least [***] days prior written notice of any such Transfer by a JV Party of shares in the Joint Venture Company shall be provided to the other JV Party.
- (e) prior to the effectiveness of a Transfer permitted under this Section 9.2, the transferring JV Party shall deliver to the Board of Directors and the other JV Party a certificate stating that:
 - (i) the transferring JV Party is not in breach of any provisions of this Agreement or any other Joint Venture Documents to which the transferring JV Party 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 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 the Joint Venture Company or the 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 a JV Party proposes to Transfer all or any part of the Shares in the Joint Venture Company in one or more related transactions (such JV Party a “**Transferor**”) to any party other than a Wholly-Owned Subsidiary of Micron or the Transferor, then the Transferor shall give the other JV Party (the “**Receiving Party**”) a written notice of the Transferor’s intention to make the Transfer (the “**Transfer Notice**”), which shall include [***]. 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.

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(b) Option to Purchase. The Receiving Party shall have the first right and option, at its sole discretion, but not the obligation, to purchase all (but not less than all) of the Offered Shares 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 Party’s intention to exercise its right and option to purchase the Offered Shares.

(c) Closing of Transfer to Receiving Party. The Transfer of Offered Shares resulting from acceptance of the Sale Offer by the Receiving Party in accordance with paragraph (b) above shall take place at a closing on a date designated by the Receiving Party 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 Party may otherwise agree. At such closing, the Transferor shall be obligated to sell and Transfer the Offered Shares and the Receiving Party 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 Party elects not to, or fails to give any notice of its 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, [***]. 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 by a JV Party 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 shall use reasonable efforts to cause the Joint Venture Company’s books of account and records to be kept and maintained in accordance with Taiwan GAAP applied on a consistent basis. The JV Parties shall use reasonable efforts to cause the fiscal year of the Joint Venture Company to be from January 1 to December 31 (“**Fiscal Year**”) and the Fiscal Quarter of the Joint Venture Company to be based on calendar months (ending on the last day of each three-month period).

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Section 10.2 Access to Information.

(a) Inspection. To the extent not in violation of Applicable Laws, the JV Parties shall use best efforts to cause each JV Party and its agents (which may include employees of the JV Party (or, in the case of MNL, of Micron) or the JV Party's independent certified public accountants (or, in the case of MNL, 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 the inspecting JV Party any and all properties, assets, books of account, corporate records, contracts, documentation and any other material of the Joint Venture Company or any of its Subsidiaries, at the request of the inspecting JV Party, whether in the possession of the foregoing or its (or their) independent certified public accountants. Upon such request, the JV Parties shall use reasonable efforts to cause the Joint Venture Company and each of its relevant Subsidiaries to use reasonable efforts to make available (or cause to make available) to such inspecting JV Party the Joint Venture Company's accountants and key employees for interviews to verify information furnished or to enable such JV Party to otherwise review the Joint Venture Company or any of its Subsidiaries and their operations.

(b) Competitively Sensitive Information. The JV Parties recognize that the Joint Venture Company may, from time to time, be in possession of Competitively Sensitive Information belonging to a JV Party, and in no event shall a JV Party be entitled to access any Competitively Sensitive Information of the other JV Party in the possession of the Joint Venture Company. The JV Parties shall use reasonable efforts to cause the Joint Venture Company to maintain procedures reasonably acceptable to both JV Parties (including requiring that the JV Parties use reasonable efforts to label or otherwise identify Competitively Sensitive Information as such) to ensure that the Joint Venture Company will not disclose or provide Competitively Sensitive Information of one JV Party to the other JV Party (other than to a Joint Venture Company employee or to an assigned employee of the other JV Party to the extent required for such employee or assigned employee to perform his or her duties for the Joint Venture Company) or any third party unless such disclosure is specifically requested by the JV Party providing such Competitively Sensitive Information.

(c) Information Right. The JV Parties shall use reasonable efforts to cause the Joint Venture Company to, and to cause the Board of Directors to cause the Joint Venture Company 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, the Joint Venture Company, 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 [***] days after the end of each fiscal month;

(B) month-end balance sheet as soon as practicable, but not later than [***] days after the end of each fiscal month;

- (C) monthly income statement as soon as practicable, but not later than [***] days after the end of each fiscal month;
- (D) monthly operational spending summary as soon as practicable, but not later than [***] days after the end of each fiscal month; and
- (E) such other reports as may be reasonably requested by each JV Party.

(ii) Quarterly Reports. As soon as practicable, but not later than [***] days after the end of each Fiscal Quarter, a consolidated balance sheet of the Joint Venture Company 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 [***] days after the end of each Fiscal Quarter, the Joint Venture Company shall also prepare a reconciliation of its quarterly financial statements to U.S. GAAP as of the end of each Fiscal Quarter. The Joint Venture Company and MNL shall cooperate with respect to the preparation of the quarterly financial statements and related reconciliation for the Joint Venture Company's current Fiscal Quarter, and the presentation thereof shall be as mutually agreed by the Joint Venture Company and MNL.

(iii) Annual Financial Statements.

(A) As soon as practicable, but not later than [***] days after the end of each Fiscal Year of the Joint Venture Company, audited consolidated financial statements of the Joint Venture Company 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 [***] days after the end of each Fiscal Year of the Joint Venture Company, audited consolidated financial statements of the Joint Venture Company 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.

Section 10.3 Other Information Rights. The Joint Venture Company 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 shall use reasonable efforts to cause the Joint Venture Company to provide notice to the JV Parties of any Joint Venture Company Reportable Event as soon as practicable and in any event not later than [***] days after the Joint Venture Company becomes aware of such Joint Venture Reportable Event. The following events shall be “**Joint Venture Reportable Events**”:

- (a) Receipt by the Joint Venture Company or any of its Subsidiaries of an offer by any Person to buy an equity interest in the Joint Venture Company or any of its Subsidiaries or a significant amount of its assets or to merge or consolidate with the Joint Venture Company 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 the Joint Venture Company or any of its Subsidiaries;
- (c) The receipt by the Joint Venture Company or any of its Subsidiaries of a notice that the Joint Venture Company or any of its Subsidiaries is in default under any loan agreement to which the Joint Venture Company or any of its Subsidiaries is a party;
- (d) Any breach by the Joint Venture Company or any of its Subsidiaries or a JV Party or an Affiliate of a JV Party of any contract between the Joint Venture Company or any of its Subsidiaries and a JV Party or an Affiliate of a JV Party;
- (e) The removal or resignation of the auditor for the Joint Venture Company, 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 the Joint Venture Company or any of its Subsidiaries.

Section 10.5 Distributions and Dividend Policy.

[***]

Section 10.6 Bank Accounts and Funds. The JV Parties shall use reasonable efforts to cause the funds of the Joint Venture Company, including any cash capital contributions, to be deposited in an interest-bearing account or accounts in the name of the Joint Venture Company and to not be commingled with the funds of any JV Party or any other Person. The JV 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 shall use reasonable efforts to cause the Joint Venture Company 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 and the Executive Vice President. The JV Parties shall use best efforts to provide that changes to the Joint Venture Company's system of internal accounting controls shall be made at the request of either 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 the Joint Venture Company under applicable GAAP, the internal controls and accounting systems of the Joint Venture Company 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 shall use their best efforts to cause the Joint Venture Company to (i) permit an independent auditor retained by such requesting JV Party and reasonably acceptable to the Joint Venture Company to perform a reasonable evaluation of the internal controls and accounting systems of the Joint Venture Company, provided that such evaluation is undertaken at the cost of the requesting JV Party and (ii) cooperate with such evaluation.

Section 10.8 FCPA. The JV Parties shall use their best efforts to cause the Joint Venture Company to comply with, and establish appropriate procedures to ensure compliance with, the United States Foreign Corrupt Practices Act of 1977, as amended.

ARTICLE 11

OTHER AGREEMENTS AND COVENANTS

Section 11.1 Tax Cooperation. The JV Parties shall cooperate in a good faith, commercially reasonable manner to maximize tax benefits and minimize tax costs of the Joint Venture Company and of the JV Parties or their Affiliates with respect to the activities of the Joint Venture Company, consistent with the overall goals of the Joint Venture Documents. Such cooperation shall include (a) NTC's use of reasonable efforts to assist Micron, MNL and the Joint Venture Company 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 the Joint Venture Company to Micron or MNL, or by MNL or an Affiliate of MNL to the Joint Venture Company 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, the Joint Venture Company to NTC, or by NTC or an Affiliate of NTC to the Joint Venture Company. [***].

Section 11.2 Use of JV Party Names. Except as may be expressly provided in the Joint Venture Documents, nothing in this Agreement shall be construed as conferring on the Joint Venture Company, any Subsidiary of the Joint Venture Company or either JV 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 (in the case of a JV Party, the other JV Party).

Section 11.3 JV Parties' Covenants. Each JV Party agrees and covenants that it will not, without the prior written consent of the other JV Party:

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- (a) confess any judgment against the Joint Venture Company;
- (b) enter into any agreement on behalf of, or otherwise purport to bind, the other JV Party or the Joint Venture Company;
- (c) cause the Joint Venture Company to take any action in contravention of the Articles of Incorporation;
- (d) cause the Joint Venture Company to dispose of the goodwill or the business opportunities of the Joint Venture Company; or
- (e) cause the Joint Venture Company to assign or place its property in trust for creditors or on the assignee's promise to pay any indebtedness of the Joint Venture Company.

Section 11.4 Contractual Relationship Between the Joint Venture Company and Any JV Party. With respect to any contract (including under the Fab Lease or the Supply Agreement) between the Joint Venture Company and a JV Party (or an Affiliate of a JV Party), the other JV Party shall have the right to demand that the Joint Venture Company, and shall have the right to cause the Joint Venture Company 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 the JV Party (or an Affiliate of the JV Party) involved in such contractual relationship with the Joint Venture Company. In respect thereof, each JV Party agrees that it will not, and it shall cause its representatives elected as directors of the Joint Venture Company to not, interfere with or otherwise obstruct in any respect such action, pursuit, enforcement or recourse.

Section 11.5 [***]

[***]

Section 11.6 [***]

ARTICLE 12

DEADLOCK; EVENTS OF DEFAULT

Section 12.1 Deadlock. A “**Deadlock**” shall [***] is required for approval, and such matter is not approved because, in the case of a [***] is not obtained.

Section 12.2 Resolution of a Deadlock. If a Deadlock occurs, the JV 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 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 sixty (60) 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 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, either JV Party may commence mediation by providing to ICDR and the other JV Party a written request for mediation, setting forth the subject of the Deadlock and the relief requested. The JV 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 covenant that they will participate in the mediation in good faith, and that they will share equally in 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, 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 the JV 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. Either 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 Party seeking enforcement shall be entitled to an award of all costs, fees and expenses, including attorneys' fees, to be paid by the JV Party against whom enforcement is ordered.

Section 12.3 Buyout from Deadlock.

[***]

Section 12.4 Event of Default. An “**Event of Default**” shall occur if (a) a JV Party (the “**Defaulting JV Party**”) breaches or fails to perform in any material respect any material obligation under this Agreement and (b) at the end of the Cure Period therefor such breach or failure remains uncured.

Section 12.5 Cure Period. Upon a JV Party's breach or failure to perform an obligation under this Agreement, the other JV Party (the “**Non-Defaulting JV Party**”) shall have the right to deliver to the Defaulting JV Party a notice of default (a “**Notice of Default**”). The Notice of Default shall set forth the nature of the Defaulting JV Party's breach or failure of performance. If the Defaulting JV Party fails to cure the breach or failure within the Cure Period, the Non-Defaulting JV Party 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 Party 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 Party diligently attempts to effect a cure throughout such period.

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Section 12.6 Default Remedy.

(a) Upon the occurrence of an Event of Default, the Non-Defaulting JV Party shall have the right, but not the obligation, by notice delivered in writing to the Defaulting JV Party not later than [***] after the expiration of the applicable Cure Period (the “**Exercise Notice**”), to require the Defaulting JV Party to:

[***]

(b) The JV 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 Fair Value. [***]

(c) Notwithstanding anything to the contrary and in addition to the remedies provided under this Section 12.6, the Joint Venture Company and the Non-Defaulting JV Party may also pursue all other legal and equitable rights and remedies against the Defaulting JV Party available to it. The Defaulting JV Party shall pay all costs, including reasonable attorneys’ fees, incurred by the Joint Venture Company and the Non-Defaulting JV Party 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, the Equity Interest of a JV Party (for purposes of this Section 13.1, the “**Non-compliant JV Party**”) falls below the lesser of (i) [***] and (ii) [***] (for purposes of this Section 13.1, the “**Compliant JV Party**”), 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 of the Joint Venture Company then owned by the Non-compliant JV Party and its Subsidiaries (such Shares, the “**Buyout Shares**”) at the Fair Value, [***] 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.

(b) Completion of Buyout.

(i) The JV 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 deliver of the Buyout Notice.

(ii) [***]

Section 13.2 Buyout Subsidiary. In the event of a buyout of Shares as contemplated under Sections 9.3, 12.3, 12.6 and/or 13.1, the JV Party subject to the buyout of its Shares shall use its 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 a wholly-owned Subsidiary of such JV Party (the “**Buyout Subsidiary**”) that has no liabilities and holds no assets other than the 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 Subsidiary, the JV Party acquiring such Shares shall have the right to acquire all of the outstanding equity interests of the Buyout Subsidiary for the same price and on the same terms as the JV Party 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. Subject to obtaining relevant regulatory approvals as may be required, this Agreement shall become effective on the Closing Date, and continue in force unless terminated in accordance with this Agreement.

Section 14.2 Termination. This Agreement shall terminate upon the Transfer of all of the Shares owned by one JV Party and its Affiliates to the other JV Party and/or its Affiliates in accordance with Section 12.3, 12.6 and 13.1; provided, that the following provisions shall survive termination of this Agreement: Sections 7.2 (to the extent Micron and NTC both continue to purchase Stack DRAM Products from the Joint Venture Company under the Supply Agreement), 7.3 (to the extent Micron and NTC both continue to purchase Stack DRAM Products from the Joint Venture Company under the Supply Agreement), 11.2 and 14.2 and Article 15.

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:

Nanya Technology Corporation
Hwa-Ya Technology Park 669
Fuhsing 3 RD. Kueishan
Taoyuan, Taiwan, ROC
Attn: Legal department
Facsimile: 886-3-396-2226

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if to MNL:

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) 368-4537

Section 15.2 Waiver. The failure at any time of a JV Party to require performance by the other JV Party of any responsibility or obligation required by this Agreement shall in no way affect a JV Party's right 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 the other JV 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. [***]

Section 15.4 Amendment. This Agreement may not be amended or modified without the written consent of the JV Parties.

Section 15.5 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 JV Parties, 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 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 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.

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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 Joint Venture Documents) and instruments referred to herein, constitute the entire agreement of the JV Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, between the JV Parties with respect to the subject matter hereof.

Section 15.10 Taxes and Expenses. Except as otherwise set forth in this Agreement, all taxes, fees and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the JV Party incurring such 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) The JV Parties shall abide by the terms of that certain Second Amended and Restated Mutual Confidentiality Agreement among Micron, MNL, NTC, MeiYa Technology Corporation and the Joint Venture Company, dated as of the date of the 2nd Closing, as may be amended or replaced from time to time (the “**Confidentiality Agreement**”), which agreement is incorporated herein by reference. The JV Parties agree that the Confidentiality Agreement shall govern the confidentiality, non-disclosure and non-use obligations between the JV Parties respecting the information provided or disclosed in connection with this Agreement.

(b) If the Confidentiality Agreement is terminated or expires and is not replaced, such Confidentiality Agreement shall continue with respect to confidential information provided in connection with this Agreement, notwithstanding such expiration or termination, for the duration of the term of this Agreement or until a new Confidentiality Agreement is entered into between the JV Parties. To the extent there is a conflict between this Agreement and the Confidentiality Agreement, the terms of this Agreement shall control.

(c) The terms and conditions of this Agreement shall be considered “**Confidential Information**” under the Confidentiality Agreement for which each of Micron and NTC is considered a “**Receiving Party**” under such Confidentiality Agreement.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date first written above.

NANYA TECHNOLOGY CORPORATION

By: /s/ Jih Lien
Jih Lien
President

**THIS IS A SIGNATURE PAGE FOR THE JOINT VENTURE AGREEMENT
ENTERED INTO BY AND BETWEEN NTC AND MNL**

MICRON SEMICONDUCTOR B.V.

By: /s/ Thomas L. Laws

Thomas L. Laws

Managing Director A

By: /s/ Stefan Boermans / /s/Clemens van den Broek

Name: Stefan Boermans / Clemens van den Broek

Title Trust International Management (T.I.M.) B.V.

Managing Director B

**THIS IS A SIGNATURE PAGE FOR THE JOINT VENTURE AGREEMENT
ENTERED INTO BY AND BETWEEN NTC AND MNL**

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

NTC/MICRON CONFIDENTIAL

FACILITATION AGREEMENT

This FACILITATION AGREEMENT (the “**Agreement**”), dated this 26th day of November, 2008, is made and entered into by and between MICRON SEMICONDUCTOR B.V. (hereinafter “**MNL**”), a private limited liability company organized under the laws of the Netherlands, NANYA TECHNOLOGY CORPORATION Nanya Technology Corporation [Translation from Chinese] (hereinafter “**NTC**”), a company incorporated under the laws of the Republic of China, and INOTERA MEMORIES, INC. Inotera Memories Inc. [Translation from Chinese], (hereinafter “**Joint Venture Company**”), a company incorporated under the laws of the Republic of China.

RECITALS

A. Micron 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 the Joint Venture Company.

B. Micron and NTC desire the Joint Venture Company to enter into this Agreement in order to fully effectuate the intent of the parties to the JV Agreement.

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. The Joint Venture Company 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 have agreed the Joint Venture Company shall do or (y) the JV Parties have agreed (through commercially reasonable efforts, best efforts or otherwise) to cause the Joint Venture Company 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), 5.3(d) and (e), 5.4(a) – (c) and 5.5;

(d) Sections 7.1(a) (but subject to obtaining the required approval of the Board of Directors), 7.2(a) and (c), 7.3, 7.4 and 7.5;

(e) Sections 8.1 – 8.3;

(f) Article 10 (but with respect to Section 10.4, subject to obtaining the required approvals of the Board of Directors and shareholders of the Joint Venture Company); and

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(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 the Joint Venture Company required by Applicable Law or the Articles of Incorporation of the Joint Venture Company).

2. Vice-Chairman. Subject to obtaining the required approvals of the Board of Directors and shareholders of the Joint Venture Company, the Joint Venture Company shall take reasonable steps as soon as practicable to amend the Articles of Incorporation to provide that (a) there shall be a Vice-Chairman of the Board of Directors, (b) unless expressly prohibited by Applicable Law, 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 a director's request for the Chairman to convene a meeting of the Board of Directors, the Vice-Chairman shall have the right to convene the meeting of the Board of Directors as requested by such director, and (c) emergency meetings of the Board of Directors may be convened from time to time by the Chairman, or (unless expressly prohibited by Applicable Law) the Vice-Chairman pursuant to the immediately preceding clause (b), by not less than two (2) Business Days notice in writing.

3. Purchase of Shares. Prior to the issuance by the Joint Venture Company of Shares or any other equity-linked securities of the Joint Venture Company, each JV Party shall provide to the Joint Venture Company a true and complete list of the Affiliates of such JV Party as of such date (the "**Listed Affiliates**"). Except as required by Applicable Law, the Joint Venture Company shall not issue Shares or any other equity-linked security of the Joint Venture Company, directly or indirectly, to any Listed Affiliate without the prior written consent of both JV Parties.

4. [***]

5. 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):

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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:

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) 368-4537

If to the Joint Venture Company:

Inotera Memories, Inc.
Hwa-Ya Technology Park
667, Fuhsing 3rd Road
Kueishan, Taoyuan
Taiwan, R.O.C.
Attn: General Counsel
Facsimile: 886-3-327-2988 Ext. 3385

(c) Waiver. The failure at any time of a JV Party to require performance by the Joint Venture Company of any responsibility or obligation required by this Agreement shall in no way affect a JV Party's right 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 the Joint Venture Company constitute a waiver of any other breach of the same or any other provision nor constitute a waiver of the responsibility or obligation itself.

(d) Assignment. [***].

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(e) Amendment. This Agreement may not be amended or modified without the written consent 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.

NANYA TECHNOLOGY CORPORATION

By: /s/ Jih Lien
Jih Lien
President

THIS IS A SIGNATURE PAGE FOR THE FACILITATION AGREEMENT
ENTERED INTO BY AND BETWEEN NTC, MNL
AND THE JOINT VENTURE COMPANY

MICRON SEMICONDUCTOR B.V.

By: /s/ Thomas L. Laws

Thomas L. Laws
Managing Director A

By: /s/ Stefan Boermans / Clemens van den Broek

Name: Stefan Boermans / Clemens van den Broek
Title Trust International Management (T.I.M.) B.V.
Managing Director B

THIS IS A SIGNATURE PAGE FOR THE FACILITATION AGREEMENT
ENTERED INTO BY AND BETWEEN NTC, MNL
AND THE JOINT VENTURE COMPANY

INOTERA MEMORIES, INC.

By: /s/ Joseph Hsieh

Name: Joseph Hsieh

Title: Supervisor

THIS IS A SIGNATURE PAGE FOR THE FACILITATION AGREEMENT
ENTERED INTO BY AND BETWEEN NTC, MNL
AND THE JOINT VENTURE COMPANY

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

NTC/MICRON CONFIDENTIAL

SUPPLY AGREEMENT

This SUPPLY AGREEMENT, is made and entered into as of this 26th day of November, 2008 (the “**Closing Date**”), by and among MICRON TECHNOLOGY, INC., a Delaware corporation (“**Micron**”), NANYA TECHNOLOGY CORPORATION Nanya Technology Corporation [Translation from Chinese] (“**NTC**” and, together with Micron, the “**Purchasers**”), a company incorporated under the laws of the Republic of China (“**ROC**” or “**Taiwan**”), and INOTERA MEMORIES, INC. Inotera Memories Inc. [Translation from Chinese] a company incorporated under the laws of the ROC (the “**Joint Venture Company**”).

RECITALS

- A. The Joint Venture Company is engaged in the manufacture of Trench DRAM Products (as defined hereinafter).
- B. The Joint Venture Company intends to convert fully from the manufacture of Trench DRAM Products to Stack DRAM Products (as defined hereinafter).
- C. The Joint Venture Company is party to the IMI/Qimonda Supply Agreement (as defined hereinafter), pursuant to which Qimonda AG, a German corporation (“**Qimonda**”), is obligated to purchase Trench DRAM Products from the Joint Venture Company.
- D. Micron, NTC and the Joint Venture Company (each, a “**Party**” and collectively, the “**Parties**”) desire, except as otherwise provided in this Agreement, that the Joint Venture Company, during the Transition Period (as defined hereinafter), generally supply (1) to Micron Trench DRAM Conforming Wafers (as defined hereinafter) and Trench DRAM Secondary Silicon (as defined hereinafter) in accordance with the Output Percentage (as defined hereinafter) of MNL (as defined hereinafter) of the aggregate Trench DRAM Manufacturing Capacity (as defined hereinafter), reduced by the Trench DRAM Products sold to Qimonda pursuant to the IMI/Qimonda Supply Agreement, and (2) to NTC Trench DRAM Conforming Wafers and Trench DRAM Secondary Silicon in accordance with NTC’s Output Percentage of the aggregate Trench DRAM Manufacturing Capacity, all upon the terms and subject to the condition set forth in this Agreement.
- E. The Parties desire the Joint Venture Company to supply (1) to Micron Stack DRAM Conforming Wafers (as defined hereinafter) and Stack DRAM Secondary Silicon (as defined hereinafter) in accordance with MNL’s Output Percentage of the aggregate Stack DRAM Manufacturing Capacity (as defined hereinafter) and (2) to NTC Stack DRAM Conforming Wafers and Stack DRAM Secondary Silicon in accordance with NTC’s Output Percentage of the aggregate Stack DRAM Manufacturing Capacity, all upon the terms and subject to the conditions set forth in this Agreement.

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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:

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:

“**Adjusted BEOL Costs Per Die**” shall have the meaning set forth in Schedule 4.9.

“**Adjusted JVC Per Wafer**” means, for a particular Purchaser for a particular Delivery Month, with respect to any JV Product Category delivered in such Delivery Month, an amount equal to the sum of (a) the JVC Per Wafer for such JV Product Category for the Delivery Month immediately preceding such Delivery Month and (b) the Adjustment to JVC Per Wafer for such Purchaser for such JV Product Category.

“**Adjustment to JVC Per Wafer**” means, for a particular Delivery Month, with respect to any JV Product Category for such Delivery Month: (a) for Micron, an amount equal to the quotient of (i) the product of (A) the Shared Costs and (B) MNL's Output Percentage (as the same may change from time to time), divided by (ii) [***] of such JV Product Category delivered to Micron in such Delivery Month and (b) for NTC, an amount equal to the quotient of (i) the product of (A) the Shared Costs and (B) NTC's Output Percentage (as the same may change from time to time), divided by (ii) [***] of such JV Product Category delivered to NTC in such Delivery Month.

“**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.

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

“**Audited Purchaser**” shall have the meaning set forth in Section 5.3(c).

“**Average JVC Per Wafer**” shall have the meaning set forth in Schedule 4.9.

“**Average Front End Cost**” means, for a particular Delivery Month, an amount equal to (a) the sum of the following for each class of Contract Products delivered in such Delivery Month (i) the Front End Cost (as defined in the IMI/Qimonda Supply Agreement) for such class of Contract Products, multiplied by (ii) the number of QC and NC wafers of such class of Contract Products delivered by the Joint Venture Company to Qimonda in such Delivery Month, divided by (b) the number of QC and NC wafers of all classes of Contract Products delivered by the Joint Venture Company to Qimonda in such Delivery Month.

“**Average Margin Per Wafer**” shall have the meaning set forth in Schedule 4.9.

“**Average Qimonda JVC Per Wafer**” means, for a particular Delivery Month, an amount equal to (a) the sum of the following for each class of Contract Products delivered in such Delivery Month (i) the Proforma JVC Per Wafer for such class of Contract Products in such Delivery Month, multiplied by (ii) the number of QC and NC wafers of such class of Contract Products delivered by the Joint Venture Company to Qimonda in such Delivery Month, divided by (b) the number of QC and NC wafers of all classes of Contract Products delivered by the Joint Venture Company to Qimonda in such Delivery Month.

“**Back End Die Yield**” shall have the meaning set forth in Schedule 4.9.

“**Baseline Flow**” means, for a particular Process Node at a particular fab, the production flow of a baseline product or product mix for such Process Node at such fab, as determined by the Manufacturing Committee; *provided* that, if the Manufacturing Committee cannot agree to a baseline product or product mix for such Process Node at such fab, then Baseline Flow shall mean the production flow of the highest volume Stack DRAM Product being produced at such Process Node at such fab and, during the Transition Period, the highest volume Trench DRAM Product being produced at such Process Node at such fab, with the mix thereof being that which will maximize the production of Stack DRAM Products.

“**BEOL Cost Per Die**” shall have the meaning set forth in Schedule 4.9.

“**Boundary Conditions**” means, with respect to any fab, the Trench DRAM Boundary Conditions and Stack DRAM Boundary Conditions.

“**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.

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

“**Conforming Ratio**” means for any given period of time, the quotient, expressed as a percentage, of (a) the number of Conforming Wafers produced during such period of time, divided by (b) the number of Conforming Wafers and Secondary Silicon produced during such period of time.

“**Conforming Wafer**” means a Trench DRAM Conforming Wafer or Stack DRAM Conforming Wafer.

“**Contract Products**” shall have the meaning set forth in the IMI/Qimonda Supply Agreement.

“**Control**” (whether or not capitalized) 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 [***] 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.

“**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.

“**Demand Forecast**” shall have the meaning set forth in [Section 3.3\(a\)](#).

“**Delivery Month**” shall have the meaning set forth in [Schedule 4.9](#).

“**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.

“**Design SOW**” means [***]

“**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 at the time of Probe Testing, divided by (b) the maximum number of such die that could be manufactured on such wafer to meet the applicable Specifications using the applicable Process Node.

“**DRAM Design**” means a Trench DRAM Design or Stack DRAM Design.

“**DRAM Product**” means a Trench DRAM Product or Stack DRAM Product.

“**Engineering Wafers**” means wafers ordered by a Purchaser in lieu of Conforming Wafers as contemplated by [Section 4.3](#).

“**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 Joint Venture Company’s fabs are 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.

“**Estimated Final Price Statement**” shall have the meaning set forth in [Section 4.9\(b\)](#).

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

“**Executive Vice President**” means the Executive Vice President of the Joint Venture Company.

“**Fab Yield**” means, for any given period of time, the quotient, expressed as a percentage, of (a) the number of Conforming Wafers produced during such period of time, divided by (b) the number of all wafers produced during such period of time.

“**Final Price Adjustment Memo**” shall have the meaning set forth in Section 4.9(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 the Joint Venture Company for financial accounting purposes.

“**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 another Party’s or Third-Party nonperformance (except for delays caused by a 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.

“**Gross Revenue Per Die**” shall have the meaning set forth in Schedule 4.9.

“**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.

“**IMI/Qimonda Supply Agreement**” means that certain Supply Agreement between the Joint Venture Company and Qimonda, dated October 11, 2008, as amended.

“**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 8.2.

“**JDP Agreement**” means that certain Joint Development Program Agreement between NTC and Micron, dated April 21, 2008, as amended.

“**JDP Committee**” means the committee formed and operated by Micron and NTC to govern the performance of Micron and NTC under the JDP Agreement in accordance with the JDP Committee Charter.

“**JDP Committee Charter**” means the charter attached as Schedule 2 of the JDP Agreement.

“**Joint Venture Agreement**” means that certain Joint Venture Agreement between NTC and MNL, dated the Closing Date, as amended, relating to the Joint Venture Company.

“**Joint Venture Company**” shall have the meaning set forth in the preamble to this Agreement.

“**[***] Report**” shall have the meaning set forth in Section 3.7(a).

“**JVC Per Wafer**” shall have the meaning set forth in Schedule 4.9.

“**JV Product Category**” shall have the meaning set forth in Schedule 4.9.

“**Loading Plan**” shall have the meaning set forth in Section 3.1.

“**Manufacturing Capacity**” means Trench DRAM Manufacturing Capacity and Stack DRAM Manufacturing Capacity.

“**Manufacturing Committee**” means the manufacturing committee established by NTC and MNL pursuant to Section 7.2(b)(i) of the Joint Venture Agreement.

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

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

“**Micron Margin Per Wafer**” shall have the meaning set forth in Schedule 4.9.

“**Micron Term**” shall have the meaning set forth in Section 10.1(a).

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

“**Mutual Confidentiality Agreement**” means that certain Second Amended and Restated Mutual Confidentiality Agreement among NTC, Micron, MNL, MeiYa Technology Corporation MeiYa Technology Corporation [Translation from Chinese] a company incorporated under the laws of the ROC, and the Joint Venture Company, dated the Closing Date, as amended.

“**NC**” shall have the meaning set forth in the IMI/Qimonda Supply Agreement.

“**Net Revenue Per Wafer**” shall have the meaning set forth in Schedule 4.9.

“**Non-SOW Product**” means a class of Stack DRAM Product that does not result from a SOW.

“**NTC**” shall have the meaning set forth in the preamble to this Agreement.

“**NTC Margin Per Wafer**” shall have the meaning set forth in Schedule 4.9.

“**NTC Term**” shall have the meaning set forth in Section 10.1(b).

“***** Report**” shall have the meaning set forth in Section 3.7(b).

“**Output Percentage**” shall have the meaning set forth in the Joint Venture Agreement.

“**Party**” and “**Parties**” shall have the meanings set forth in Recital D to this Agreement.

“**Performance Criteria**” means the factors of [***]

“**Permitted Disclosures**” shall have the meaning set forth in Section 3.9(a).

“**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.

“**Planning Forecast**” shall have the meaning set forth in Section 3.3(b).

“**PPCRA**” means that certain Product Purchase and Capacity Reservation Agreement among NTC, Qimonda and the Joint Venture Company, dated November 13, 2002, as amended.

“***** Price**” means [***]

“**President**” means the President of the Joint Venture Company.

“**Price**” or “**Pricing**” means the calculation set forth on Schedule 4.9.

“***** Report**” shall have the meaning set forth in Section 3.7(c).

“**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 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.

“**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 during such period of time, divided by (b) the number of die probed (excluding the number of die contained on scrapped wafers) during such period of time.

“**Product Die Yield**” shall have the meaning set forth in Schedule 4.9.

“**Proforma Invoice**” shall have the meaning set forth in Section 4.9(a).

“**Proforma JVC Per Wafer**” means, for a particular Delivery Month, with respect to any class of Contract Products for such Delivery Month, [***]

“**Process Node**” means [***]

“**Proposed Loading Plan**” shall have the meaning set forth in Section 3.3(c).

“**Proposed Manufacturing Plan**” shall have the meaning set forth in Section 3.1.

“**Purchase Order**” shall have the meaning set forth in Section 4.4.

“**Purchasers**” shall have the meaning set forth in the preamble to this Agreement.

“**Purchaser Indemnified Party**” means Micron, NTC or any of their respective Subsidiaries.

“**QC**” shall have the meaning set forth in the IMI/Qimonda Supply Agreement.

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

“**Qimonda**” shall have the meaning set forth in Recital C to this Agreement.

[***]

[***]

“**Ramp Down Period**” shall have the meaning set forth in the IMI/Qimonda Supply Agreement.

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

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

“**ROC**” shall have the meaning set forth in the preamble to this Agreement.

“**Secondary Silicon**” means Trench DRAM Secondary Silicon or Stack DRAM Secondary Silicon.

“**Secondary Silicon Specifications**” means those specifications used to describe, characterize, and define the quality and performance of Secondary Silicon, as such specifications may be determined from time to time by the Parties.

“**Segregated Employees**” means [***]

“**Shared Costs**” means, [***]

“**Shared Design ID Wafers**” means all wafers with the same Design ID that are intended to be sold to more than one Person.

“**Ship Lot Line Yield**” means, [***]

“**SOW**” means a statement of the work that describes research and development work to be performed under the JDP Agreement and that has been adopted by the JDP Committee pursuant to Section 3.2 of the JDP Agreement.

“**Specifications**” means those specifications used to describe, characterize, and define the quality and performance of the applicable Conforming Wafer (or of the die thereon, as applicable), as such specifications may be determined from time to time by the Parties.

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

“**Stack DRAM Boundary Conditions**” means, with respect to any fab, a requirement that, at any point in time:

[***]

“**Stack DRAM Conforming Wafer**” means a wafer (other than an Engineering Wafer) delivered by the Joint Venture Company to a Purchaser under this Agreement containing Stack DRAM Products that has a minimum Die Yield of [***] (or such other minimum Die Yield as the Parties may agree in writing) and meets the applicable Specifications.

“**Stack DRAM Design**” means, with respect to a Stack DRAM Product, all of the design elements, components, specifications and information required to manufacture the subject Stack DRAM Product, including some or all of the elements, components, specifications and information listed on Schedule 3 to the JDP Agreement or others.

“**Stack DRAM Manufacturing Capacity**” means, with respect to each of the Joint Venture Company’s fabs, the total work minutes available for each Process Node to manufacture Stack DRAM Products at such fab.

“**Stack DRAM Module**” means one or more Stack DRAM Products in a JEDEC-compliant 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 comprising Stack DRAM, whether in die or wafer form.

“**Stack DRAM Secondary Silicon**” means a wafer delivered by the Joint Venture Company to a Purchaser under this Agreement containing Stack DRAM Products that fails to meet the applicable Specifications or a minimum Die Yield of [***] (or such other minimum Die Yield as the Parties may agree in writing), *provided* that such wafer otherwise conforms to the applicable Secondary Silicon Specifications and has a minimum Die Yield of [***] (or such other minimum Die Yield as the Parties may agree in writing) or such other minimum Die Yield as the Parties may mutually agree in writing.

[***]

“**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.

“**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.

“**Technology Transfer Agreement**” means that certain Technology Transfer Agreement among NTC, Micron and the Joint Venture Company, dated the Closing Date, as amended.

“**Technology Transfer and License Agreement**” means that certain Amended and Restated Technology Transfer and License Agreement between Micron and NTC, dated the Closing Date, as amended.

“**Third Party**” means any Person, other than NTC, Micron, the Joint Venture Company 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.

“**Transition Period**” means [***]

“**Trench Contract Process**” means the 90nm and 70nm trench based DRAM process technology previously transferred to the Joint Venture Company under that certain Know How Transfer Agreement among the Joint Venture Company, NTC and Qimonda, dated November 13, 2002, as amended.

“**Trench DRAM Boundary Conditions**” means, with respect to any fab, a requirement that, at any point in time:

[***]

“**Trench DRAM Conforming Wafer**” means a wafer (other than an Engineering Wafer) delivered by the Joint Venture Company to a Purchaser under this Agreement containing Trench DRAM Products that has a minimum Die Yield of [***] and meets the applicable Specifications.

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“**Trench DRAM Designs**” means, with respect to a Trench DRAM Product, the corresponding design components, materials and information.

“**Trench DRAM Manufacturing Capacity**” means, with respect to each of the Joint Venture Company’s fabs, the total work minutes available for each Process Node to manufacture Trench DRAM Products at such fab.

“**Trench DRAM Products**” means trench based dynamic random access memory products manufactured by the Joint Venture Company in accordance with the Trench Contract Process.

“**Trench DRAM Secondary Silicon**” means a wafer delivered by the Joint Venture Company to a Purchaser under this Agreement containing Trench DRAM Products that fails to meet the applicable Specifications or a minimum Die Yield of [***], *provided* that such wafer otherwise conforms to the applicable Secondary Silicon Specifications and has a Die Yield of [***] or such other minimum Die Yield as the Parties may mutually agree in writing.

“**TTA 68-50**” means that certain Technology Transfer Agreement for 68-50 nm Process Nodes between Micron and the Joint Venture Company, dated October 11, 2008, as amended.

“**TTLA 68-50**” means that certain Technology Transfer and License Agreement for 68 50 nm Process Nodes between Micron and NTC, dated April 21, 2008, as amended.

“**US GAAP**” means GAAP used in the United States, as in effect from time to time, consistently applied for all periods at issue.

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

“**Warranty Claim Period**” shall have the meaning set forth in Section 6.2.

“**WIP**” means work in process at any of the Joint Venture Company’s fabs, including all wafers in wafer fabrication and sort and all completed Conforming Wafers and Secondary Silicon not yet delivered to a Purchaser.

“**WIP Data**” means in line inventory data, including wafer numbers, lot numbers, unit volumes, wafer volumes, Cycle-Times, Die Yield, Fab 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, has the meaning commonly applied to it in accordance with US GAAP, and (B) with respect to NTC and the Joint Venture Company, 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 following fabs collectively shall constitute a single fab: (i) the existing fabs commonly referred to as “Fab 1” and “Fab 2” located at Hwa Ya Technology Park, Taoyuan, Taiwan, and (ii) the fab currently leased by MeiYa Technology Corporation MeiYa Technology Corporation [Translation from Chinese], a company incorporated under the laws of the ROC, also located at Hwa Ya Technology Park, Taoyuan, Taiwan, at such time as it is operated by the Joint Venture Company.

ARTICLE 2
OBLIGATIONS OF THE PARTIES;
PROCESSES AND CONTROLS

2.1 General Obligations.

(a) The Joint Venture Company shall convert fully from the manufacture of Trench DRAM Products to the manufacture of Stack DRAM Products as soon as commercially practicable taking into account relevant manufacturing, finance and sales considerations and shall otherwise provide and develop fabs to meet Manufacturing Capacity according to the Manufacturing Plan in effect from time to time and the obligations set forth herein.

[***]

2.2 Control; Processes. The Parties shall review the Joint Venture Company’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 the Joint Venture Company’s manufacture of Conforming Wafers. The Parties agree to work together in good faith to define mutually agreeable control and process mechanisms, including the following: [***].

2.3 Production Masks.

(a) During the Transition Period, the Joint Venture Company shall obtain all masks required to manufacture Trench DRAM Products under this Agreement in accordance with its policies with respect thereto existing as of the date hereof.

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(b) Until a second source for masks is qualified by the JDP Committee for the 68nm Process Node or 50nm Process Node or a particular Stack DRAM Product pursuant to Section 3.7 of the JDP Agreement, and then except to the extent of such qualification, the Joint Venture Company shall order all masks required to manufacture Stack DRAM Products under this Agreement from [***]. Upon the qualification of a second source for masks for a particular Process Node or Stack DRAM Product by the JDP Committee in accordance with Section 3.7 of the JDP Agreement, the Joint Venture Company shall comply with the instructions from time to time of the Manufacturing Committee with regards to whether such qualified second source or [***] will be used to create, maintain, repair and replace the masks required for such Process Nodes or Stack DRAM Products under this Agreement. The Joint Venture Company shall have possession, but not ownership of any underlying copyrights, mask works or other intellectual property, of any physical production masks which the Joint Venture Company obtains in accordance with this Section 2.3(b).

2.4 Designation of WIP.

(a) WIP Associated With Shared Design ID Wafers. The Joint Venture Company shall ensure that WIP at its fabs associated with Shared Design ID Wafers is designated for all of the purchasers of such Shared Design ID Wafers from Wafer Start, and the Shared Design ID Wafers shall be allocated to the purchasers of such Shared Design ID Wafers immediately prior to Probe Testing by Design ID *pro rata* in accordance with the relative number of such Shared Design ID Wafers to be delivered to each purchaser during such Delivery Month pursuant to the Purchasers' Purchase Orders and Qimonda's non-cancellable purchase orders delivered pursuant to Section 4.2 of the IMI/Qimonda Supply Agreement.

(b) Other WIP. The Joint Venture Company shall ensure that WIP at its fabs associated with wafers other than Shared Design ID Wafers to be purchased by Micron, NTC or Qimonda is designated for such purchaser from Wafer Start.

~~2.5~~ Subcontractors. The Joint Venture Company may utilize subcontractors, subject to all subcontractors whose work could reasonably be expected to have a direct impact on the manufacture of Conforming Wafers or Probe Testing being approved by at least one of the Purchasers, which approval shall not be unreasonably withheld or delayed. The Joint Venture Company shall ensure that all contracts with subcontractors (a) shall provide the Joint Venture Company with the same level of access and controls as the Joint Venture Company provides to the Purchasers in this Agreement and (b) contain customary nondisclosure obligations in a form reasonably acceptable to the Purchasers.

2.6 [***]. In addition to the [***] Report and the monthly review requirements set forth in Section 3.7, the Joint Venture Company shall promptly notify each Purchaser of [***].

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

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2.8 Access to WIP Data. The Joint Venture Company shall provide each Purchaser with full access to its respective WIP Data (including with respect to Shared Design ID Wafers) [***].

2.9 Additional Customer Requirements.

(a) Micron shall inform the Joint Venture Company in writing of any supplier requirements of any Micron customer relating to any of the Joint Venture Company's fabs at which DRAM Product is manufactured for Micron. Micron and the Joint Venture Company shall work together in good faith to satisfy such requirements.

(b) NTC shall inform the Joint Venture Company in writing of any supplier requirements of any NTC customer relating to any of the Joint Venture Company's fabs at which DRAM Product is manufactured for NTC. NTC and the Joint Venture Company shall work together in good faith to satisfy such requirements.

2.10 Notification of Changes in Output Percentage. Micron and NTC shall jointly notify the Joint Venture Company of any change in the Output Percentages of MNL and NTC as promptly as practicable but no later than the date that is [***] days prior to the effectiveness of such change.

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, the Joint Venture Company shall prepare, under the direction of the President, with input from the Executive Vice President, the Purchasers and the Manufacturing Committee (or such other persons or committees charged with such responsibility from time to time by the MNL and NTC), an annual manufacturing plan (the "**Proposed Manufacturing Plan**") for the next [***] Fiscal Quarters (or such other period or periods as may be agreed in writing by the Parties) and shall submit the Proposed Manufacturing Plan to the Manufacturing Committee for its approval; *provided* that, notwithstanding the foregoing, the Proposed Manufacturing Plan to be prepared for [***]. The Manufacturing Committee may approve the Proposed Manufacturing Plan as submitted or may condition its approval on the Joint Venture Company making changes to the Proposed Manufacturing Plan, in which case the Joint Venture Company shall make such changes to the Proposed Manufacturing Plan (as so approved and, if applicable, changed, the "**Manufacturing Plan**"). Upon such approval of and, if applicable, such amendment to the Proposed Manufacturing Plan, the Manufacturing Plan shall become effective. The Manufacturing Plan shall seek to optimize the efficiency and output of the Joint Venture Company and shall be updated in accordance with Section 3.3. The Manufacturing Plan shall address [***].

3.2 Quarterly Statement Regarding Anticipated Share of Manufacturing Capacity. No later than [***] days (or such other number of days as may be agreed in writing by the Parties) prior to the end of each Fiscal Quarter (commencing with the [***]), the Joint Venture Company shall deliver to each Purchaser a statement setting forth such Purchaser's anticipated share of the Manufacturing Capacity of the Joint Venture Company [***] Fiscal Quarters (or such other period or periods as may be agreed in writing by the Parties), based on, [***].

3.3 Quarterly Planning and Forecasting.

(a) At a point in each Fiscal Quarter as agreed in writing by the Parties (commencing with the [***]), each Purchaser shall provide the Joint Venture Company with a written non-binding forecast of such Purchaser's demand (a "**Demand Forecast**") for the next [***] (or such other period or periods as may be agreed in writing by the Parties). All Demand Forecasts [***].

(b) The Joint Venture Company shall furnish each Purchaser with a written response within [***] (or such other number of days as may be agreed in writing by the Parties) of receiving such Purchaser's Demand Forecast, indicating its Manufacturing Capacity during the period covered by such Demand Forecast [***] outlined in such Demand Forecast that the Joint Venture Company can commit to deliver. This written response (the "**Planning Forecast**") shall include:

[***]

(c) Based on the Planning Forecasts (and, during the Ramp Down Period, the Ramp Down Wafer Starts (as defined in the IMI/Qimonda Supply Agreement)), the Joint Venture Company shall develop a proposed Loading Plan (the "**Proposed Loading Plan**") for the next [***] Fiscal Quarters (or such other period or periods as may be agreed in writing by the Parties). The Joint Venture Company shall provide each Purchaser with the Proposed Loading Plan at least [***] (or such other number of days as may be agreed in writing by the Parties) prior to its review by the Manufacturing Committee.

(d) The Joint Venture Company shall submit the Proposed Loading Plan, Planning Forecasts and other requested information to the Manufacturing Committee for its approval. The Manufacturing Committee may approve the Proposed Loading Plan as submitted or may condition its approval on the Joint Venture Company making changes to the Proposed Loading Plan, in which case the Joint Venture Company shall make such changes to the Proposed Loading Plan. Upon such approval of and, if applicable, such changes to the Proposed Loading Plan, the Manufacturing Plan shall be changed to conform to the Proposed Loading Plan, as so approved and, if applicable, changed.

3.4 [***]

3.5 Loading Modifications. The Joint Venture Company may, from time to time, submit to the Manufacturing Committee for its approval recommendations for loading wafers in a manner other than as set forth in the Manufacturing Plan. If such recommendations are approved by the Manufacturing Committee, notwithstanding anything herein to the contrary, the Joint Venture Company shall load wafers in accordance with such recommendations. The Manufacturing Committee may, from time to time, and shall at least monthly, consider loading modifications and may, from time to time and at any time, require that wafers be loaded in a manner other than as set forth in the Manufacturing Plan, in which case, notwithstanding anything herein to the contrary, the Joint Venture Company shall load wafers as so required rather than as set forth in the Manufacturing Plan.

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3.6 Manufacturing Committee Deadlock. If the Manufacturing Committee does not agree on whether to approve or how to change a Proposed Manufacturing Plan or a Proposed Loading Plan or if a member of the Manufacturing Committee requests that wafers be loaded in a manner other than as set forth in the Manufacturing Plan and the Manufacturing Committee does not agree to the manner in which wafers should be loaded, then the Joint Venture Company [***].

3.7 Monthly Reports.

(a) [***] Reports. Within [***](or such other number of days as may be agreed in writing by the Parties) [***], the Joint Venture Company shall deliver to each Purchaser a report (each, a “[***] **Report**”) which shall include:

[***]

Neither Purchaser will use or disclose the [***] Reports, or the contents thereof, received by such Purchaser in contravention of any Applicable Law.

(b) [***] Report. [***] days (or such other number of days as may be agreed in writing by the Parties) after the end of each Fiscal Month, the Joint Venture Company shall deliver to each Purchaser a report [***] (the “[***] **Report**”), which shall include:

- (i) a comparison of [***];
- (ii) a summary of [***];
- (iii) a description of [***] and
- (iv) a description [***].

(c) [***] Reports. [***] days (or such other number of days as may be agreed in writing by the Parties) after the end of each Fiscal Month, each Purchaser shall deliver to the Joint Venture Company a report (each, a “[***] **Report**”), which shall [***] The Joint Venture Company will not use or disclose the [***] Reports, or the contents thereof, received by the Joint Venture Company in contravention of any Applicable Law.

3.8 Performance Reviews.

(a) The Joint Venture Company shall hold a monthly meeting with the Manufacturing Committee, the primary purposes of which shall be to review and discuss the most recent [***] Report and the Performance Criteria and to mutually agree on operational adjustments if necessary.

(b) Each Purchaser (separately) and the Joint Venture Company shall hold a monthly meeting to review and discuss (i) at the election of such Purchaser, the most recent [***] Report received by such Purchaser, and (ii) at the election of the Joint Venture Company, the most recent [***] Report delivered by such Purchaser.

(c) The monthly meetings required by this Section 3.8 shall be held on dates to be agreed in writing by the Parties intended to attend such meetings; *provided that* (i) the meeting required by Section 3.8(a) shall not be held prior to the delivery of the [***] Report by the Joint Venture Company, and (ii) the meetings required by Section 3.8(b) shall not be held prior to the delivery of the [***] Report and the applicable [***] Report by the Joint Venture Company and the delivery of the [***] Report by the applicable Purchaser.

3.9 Restrictions on Access to Pricing Information; Nonsolicitation of Segregated Employees.

(a) The Joint Venture Company shall prevent any Person that is not a Segregated Employee from obtaining access to the [***] (including the [***] Reports), or the data from which [***] is derived from, delivered to, or created by, the Joint Venture Company 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 the Joint Venture Company may provide (A) a Purchaser with its [***] Reports and the Proforma Invoices and [***] delivered to such Purchaser under Section 4.9, and the data from which such [***] Reports, Proforma Invoices, [***] or [***] are derived, (B) any independent Third Party auditor acting as contemplated by Section 5.3 with such information as such auditor may request that is reasonably relevant to the applicable inspection and audit, and (C) the Joint Venture Company's independent outside auditors with such information as such auditor may reasonably request in connection with its audit of the Joint Venture Company'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, the Joint Venture Company shall (x) develop, maintain, implement and enforce policies that (A) prohibit all Segregated Employees from disclosing, or allowing disclosure of, [***] (including the [***] 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 [***] 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 the Joint Venture Company, and (z) maintain all electronic files containing [***] (including the [***] Reports) in confidential password protected files. Neither Purchaser shall take any action that reasonably should be expected to cause the Joint Venture Company to violate this Section 3.9.

(b) Even if permitted under Section 8.4 of the Joint Venture Agreement, the Purchasers shall not, and shall cause their respective 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.

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(a) During the Transition Period, except as otherwise provided in Section 2.1(b), Micron shall purchase from the Joint Venture Company [***]. During the Transition Period, NTC shall purchase from the Joint Venture Company [***].

(b) Micron shall purchase from the Joint Venture Company [***].

(c) Notwithstanding anything in Sections 4.1(a) and 4.1(b) to the contrary, the Joint Venture Company shall manufacture for and deliver to the Purchasers Conforming Wafers in quantities other than as contemplated by Sections 4.1(a) and 4.1(b) upon receiving, and in accordance with, joint written instructions from the Purchasers setting forth a new allocation of Conforming Wafers between the Purchasers.

4.2 Secondary Silicon and Scrapped Wafers.

(a) At the direction and option of Micron, the Joint Venture Company shall deliver to Micron all Secondary Silicon produced by the Joint Venture Company (i) from wafers designated from Wafer Start for Micron in accordance with Section 2.4 and (ii) in the case of Shared Design ID Wafers, the portion thereof allocated to Micron in accordance with Section 2.4. At the direction and option of Micron, the Joint Venture Company shall deliver to Micron all scrapped wafers produced by the Joint Venture Company (x) from wafers designated from Wafer Start for Micron and Qimonda in accordance with Section 2.4 and (y) in the case of Shared Design ID Wafers, the portion thereof allocated to Micron and Qimonda in accordance with Section 2.4.

(b) At the direction and option of NTC, the Joint Venture Company shall deliver to NTC all Secondary Silicon produced by the Joint Venture Company (i) from wafers designated from Wafer Start for NTC in accordance with Section 2.4 and (ii) in the case of Shared Design ID Wafers, the portion thereof allocated to NTC in accordance with Section 2.4. At the direction and option of NTC, the Joint Venture Company shall deliver to NTC all scrapped wafers produced by the Joint Venture Company (x) from wafers designated from Wafer Start for NTC in accordance with Section 2.4 and (y) in the case of Shared Design ID Wafers, the portion thereof allocated to NTC in accordance with Section 2.4.

4.3 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 a Purchaser, the Joint Venture Company shall manufacture and deliver Engineering Wafers in lieu of Conforming Wafers. The Manufacturing Capacity required to manufacture each Engineering Wafer shall be deemed to equal [***] of the Manufacturing Capacity required to manufacture a Conforming Wafer of the same Design ID. The Joint Venture Company shall promptly provide each Purchaser with full access to all data it reasonably requests relating to Engineering Wafers that are being manufactured by the Joint Venture Company for such Purchaser.

4.4 Placement of Purchase Orders. Prior to the commencement of every Fiscal Month or such other time period as agreed in writing by the Parties, each Purchaser shall place a non-cancelable blanket purchase order (each such order, a “**Purchase Order**”) for the quantity, by Design ID, of Conforming Wafers and Engineering Wafers to be supplied to it by the Joint Venture Company in the upcoming Fiscal Month. [***] The terms and conditions of this Agreement supersede the terms and conditions contained in any Party’s sales or purchase documentation provided in connection herewith unless expressly agreed otherwise in a writing signed by each Party.

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 and of each Engineering Wafer;
- (c) by Design ID, [***];
- (d) [***];
- (e) [***];
- (f) special instructions for manufacturing Engineering Wafers, if any;
- (g) by Design ID, [***];
- (h) by Design ID, the place of delivery; and
- (i) other terms (if any).

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

4.6 Acceptance of Purchase Order. Each Purchase Order that (a) is consistent with the Boundary Conditions, (b) corresponds to the Manufacturing Plan in the manner contemplated by Section 4.4, and (c) is otherwise free of errors, shall be deemed accepted by the Joint Venture Company upon receipt and shall be binding on the Joint Venture Company and the applicable Purchaser to the extent not inconsistent with the Boundary Conditions and the Manufacturing Plan.

4.7 Shortfall; Excess Output.

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

(b) The Joint Venture Company shall immediately notify the applicable Purchaser in writing if the output to be purchased by such Purchaser under this Agreement will exceed, for any Design ID, the quantity of Conforming Wafers contained in such Purchaser's Purchase Order. In such an event, such Purchaser shall accept delivery of the additional quantities and issue to the Joint Venture Company 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 and Engineering Wafers to a Purchaser and the payments therefor provided herein shall be stated separately on the Joint Venture Company's Proforma Invoices and Final Price Adjustment Memos, collected from such Purchaser and shall be remitted by the Joint Venture Company to the appropriate tax authority ("**Recoverable Taxes**"), unless such Purchaser provides valid proof of tax exemption prior to the effective date of the transfer of the Conforming Wafers and Engineering Wafers or otherwise as permitted by Applicable Law prior to the time the Joint Venture Company 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 a Purchaser and remittance of taxes by the Joint Venture Company is required by Applicable Law, the Joint Venture Company shall have sole responsibility for payment of said taxes to the appropriate tax authorities. In the event such taxes are Recoverable Taxes and the Joint Venture Company does not collect tax from such Purchaser, or pay such taxes to the appropriate governmental entity on a timely basis, and is subsequently audited by any tax authority, liability of such 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 either Purchaser, 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 business and occupation taxes, and such taxes shall not be Recoverable Taxes.

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

4.9 Invoicing; Payment.

(a) Along with each delivery of Conforming Wafers or Engineering Wafers to a Purchaser, the Joint Venture Company shall invoice such Purchaser for the aggregate [***] Price of the Conforming Wafers and Engineering Wafers contained in such delivery (a "**Proforma Invoice**").

(b) No later than [***] days (or such other number of days as may be agreed in writing by the Parties) prior to the end of each Delivery Month, each Purchaser shall deliver to the Joint Venture Company a statement setting forth such Purchaser's estimates of [***] and, at the end of such Delivery Month, the Joint Venture Company shall deliver to such Purchaser a statement setting forth [***] (the "**Estimated Final Price Statement**").

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(c) No later than [***] (or such other number of days as may be agreed in writing by the Parties) after the delivery by both Purchasers to the Joint Venture Company of their respective [***] Reports with respect to any Delivery Month, the Joint Venture Company shall issue a credit or debit memo (the "**Final Price Adjustment Memo**") as appropriate to such Purchaser in an [***].

(d) During the Ramp Down Period, each Final Price Adjustment Memo issued to Micron by the Joint Venture Company shall be accompanied by a separate credit or debit memo (the "[***]") as appropriate in an [***].

(e) Except as otherwise specified in this Agreement, each Purchaser shall pay the Joint Venture Company for the amounts due and owing by, and duly invoiced in a Proforma Invoice or a Final Price Adjustment Memo (or, in the case of Micron, a [***]) to, such Purchaser within [***] days following delivery to such Purchaser of both the Proforma Invoice and Final Price Adjustment Memo (and, in the case of Micron, the [***]) therefor or, if longer, 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.

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

4.11 Title; Risk of Loss. Title to, and risk of loss of, Conforming Wafers, Engineering Wafers, Secondary Silicon and scrapped wafers shall pass to Purchasers [***] according to Incoterms 2000, as amended.

4.12 Packaging. All shipment packaging of the Conforming Wafers, Engineering Wafers, Secondary Silicon and scrapped wafers shall be in conformance with the Specifications, the applicable 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 the Joint Venture Company in accordance with the applicable Purchaser's reasonable instructions.

4.13 Shipment. All Conforming Wafers, Engineering Wafers, Secondary Silicon and scrapped 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. The Joint Venture Company shall mark all containers with (w) necessary lifting, handling and shipping information; (x) Purchase Order number; (y) date of shipment; and (z) the name of the applicable Purchaser. If no instructions are given, the Joint Venture Company shall select the most price effective carrier, given the time constraints known to the Joint Venture Company. At a Purchaser's request, the Joint Venture Company shall provide drop-shipment of Conforming Wafers, Engineering Wafers, Secondary Silicon and scrapped wafers to such Purchaser's customers, contractors or vendors. Such shipment service may be provided by a subcontractor to the Joint Venture Company provided that title remains with the Joint Venture Company and then passes to such Purchaser upon tender to the carrier. In no event shall the Joint Venture Company be obligated to maintain any significant inventory for the Purchasers.

4.14 Customs Clearance. Upon a Purchaser's request, the Joint Venture Company shall promptly provide such Purchaser with a statement of origin, and applicable customs documentation, for Conforming Wafers, Engineering Wafers, Secondary Silicon and scrapped wafers wholly or partially manufactured outside of the country of import.

ARTICLE 5 VISITATIONS; AUDITS

5.1 Visits. The Joint Venture Company shall accommodate each Purchaser's reasonable requests for visits to the Joint Venture Company's fabs 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.

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

5.3 Financial Audit.

(a) Micron reserves the right to have the Joint Venture Company's books and records related to Pricing of the Conforming Wafers delivered to Micron 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 Schedule 4.9. Such audit shall be performed, at Micron's expense, by an independent Third Party auditor acceptable to both Micron and the Joint Venture Company. Micron shall provide [***] days advance written notice to the Joint Venture Company of its desire to initiate an audit, and the audit shall be scheduled so that it does not adversely impact or interrupt the Joint Venture Company's business operations. If the audit reveals any material discrepancies, Micron or the Joint Venture Company 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 Micron and the Joint Venture Company. Notwithstanding the foregoing, auditor reports shall not disclose pricing, or terms of purchase, for any purchases of materials or equipment by the Joint Venture Company, absent written agreement from the respective legal counsel of Micron and the Joint Venture Company. If any audit reveals a material discrepancy requiring a payment by the Joint Venture Company, Micron may increase the frequency of such audits to [***] for the [***] month period. If any such audit reveals any discrepancy, the Joint Venture Company shall notify NTC of (i) the existence of such discrepancy, (ii) whether such discrepancy was found in the computation of the [***], and (iii) the aggregate amount of the discrepancy by category ([***]). Notwithstanding the foregoing, the Joint Venture Company shall not disclose any Pricing information to NTC to the extent such disclosure would violate Applicable Law.

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(b) NTC reserves the right to have the Joint Venture Company's books and records related to Pricing of the Conforming Wafers delivered to NTC 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 Schedule 4.9. Such audit shall be performed, at NTC's expense, by an independent Third Party auditor acceptable to both NTC and the Joint Venture Company. NTC shall provide [***] days advance written notice to the Joint Venture Company of its desire to initiate an audit, and the audit shall be scheduled so that it does not adversely impact or interrupt the Joint Venture Company's business operations. If the audit reveals any material discrepancies, NTC or the Joint Venture Company 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 NTC and the Joint Venture Company. Notwithstanding the foregoing, auditor reports shall not disclose pricing, or terms of purchase, for any purchases of materials or equipment by the Joint Venture Company, absent written agreement from the respective legal counsel of NTC and the Joint Venture Company. If any audit reveals a material discrepancy requiring a payment by the Joint Venture Company, NTC may increase the frequency of such audits to [***] for the [***] month period. If any such audit reveals any discrepancy, the Joint Venture Company shall notify Micron of (i) the existence of such discrepancy, (ii) whether such discrepancy was found in the computation of the [***], and (iii) the aggregate amount of the discrepancy by category (*i.e.*, [***]). Notwithstanding the foregoing, the Joint Venture Company shall not disclose any Pricing information to Micron to the extent such disclosure would violate Applicable Law.

(c) The Joint Venture Company reserves the right to have a Purchaser's (the "**Audited Purchaser's**") books and records related to the Audited Purchaser's Pricing Report 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 Schedule 4.9. Such audit shall be performed, at the Joint Venture Company's expense, by an independent Third Party auditor acceptable to both the Joint Venture Company and the Audited Purchaser. The Joint Venture Company shall provide [***] days advance written notice to the Audited Purchaser of its desire to initiate an audit, and the audit shall be scheduled so that it does not adversely impact or interrupt the Audited Purchaser's business operations. If the audit reveals any material discrepancies, the Audited Purchaser or the Joint Venture Company 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 Audited Purchaser and the Joint Venture Company. Notwithstanding the foregoing, auditor reports shall not disclose (i) pricing, or terms of purchase, for any purchases of materials or equipment by the Audited Purchaser, (ii) the back end component and module assembly, packaging and testing costs of the Audited Purchaser, or (iii) the terms of sales of DRAM Products by the Audited Purchaser, absent written agreement from the respective legal counsel of the Audited Purchaser and the Joint Venture Company. If any audit reveals a material discrepancy requiring a payment by the Audited Purchaser, the Joint Venture Company may increase the frequency of such audits to [***] for the subsequent [***]. If any such audit reveals any discrepancy, the Joint Venture Company shall notify the Purchaser that is not the Audited Purchaser of (i) the existence of such discrepancy, (ii) whether such discrepancy was found in the computation of [***], and (iii) the aggregate amount of the discrepancy by category (*i.e.*, [***]). Notwithstanding the foregoing, the Joint Venture Company shall not disclose any Pricing information to the Purchaser that is not the Audited Purchaser to the extent such disclosure would violate Applicable Law.

(d) Pricing information as to which audit rights under this Section 5.3 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 5.3 prior to such expiration and (ii) the process under this Section 5.3 has not been fully completed with respect to such audit.

5.4 Micron Financial Audit Rights with Respect to the [***]. Micron reserves the right to have the Joint Venture Company's books and records related to the [***] delivered to Micron inspected and audited not more than twice during any Fiscal Year to ensure compliance with Section 4.9. Such audit shall be performed, at Micron's expense, by an independent Third Party auditor acceptable to both Micron and the Joint Venture Company. Micron shall provide [***] written notice to the Joint Venture Company of its desire to initiate an audit, and the audit shall be scheduled so that it does not adversely impact or interrupt the Joint Venture Company's business operations. If the audit reveals any material discrepancies, Micron or the Joint Venture Company shall reimburse the other, as applicable, for any material discrepancies [***] after completion of the audit. The nature and extent of the discrepancies identified by the audit shall be reported to Micron and the Joint Venture Company. If any audit reveals a material discrepancy requiring a payment by the Joint Venture Company, Micron may increase the frequency of such audits to once per Fiscal Quarter.

ARTICLE 6

WARRANTY; HAZARDOUS SUBSTANCES; DISCLAIMER

6.1 Warranties.

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

- (i) such Conforming Wafers conform to all agreed Specifications;
- (ii) such Conforming Wafers are free from defects in materials and workmanship; and
- (iii) the Joint Venture Company has the necessary right, title and interest to such Conforming Wafers, and, upon the sale of such Conforming Wafers to the applicable Purchaser, such Conforming Wafers shall be free of liens and encumbrances.

(b) Engineering Wafers, Secondary Silicon and Scrapped Wafers. ALL ENGINEERING WAFERS, SECONDARY SILICON AND SCRAPPED WAFERS PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS," "WHERE IS" BASIS WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND.

6.2 Warranty Claims. Within a period of time, [***] (“**Warranty Claim Period**”), such Purchaser shall notify the Joint Venture Company if it believes that any Conforming Wafer does not meet the warranty set forth in Section 6.1. Such Purchaser shall return such Conforming Wafer (or DRAM Product therefrom) to the Joint Venture Company as directed by the Joint Venture Company. If a Conforming Wafer is determined not to be in compliance with such warranty, then such Purchaser shall be entitled to return such Conforming Wafer (or DRAM Product therefrom) and receive a credit (or, if this Agreement has or is terminating with respect to such Purchaser so that it will not be able to use such credit, a refund) equal to the sum of (a) any monies paid to the Joint Venture Company by the Purchaser in respect of such Conforming Wafer [***].

6.3 Inspections. Each Purchaser may, upon reasonable advance written notice, request samples of WIP designated to such 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 Specification(s) hereunder, *provided* that the provision of such samples shall not materially impact the Joint Venture Company’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. The Joint Venture Company shall provide reasonable assistance for the safety and convenience of the requesting Purchaser in obtaining the samples in such manner as shall not unreasonably hinder or delay the Joint Venture Company’s performance.

6.4 Hazardous Substances.

(a) If Conforming Wafers, Engineering Wafers, Secondary Silicon, scrapped wafers or DRAM Products provided hereunder include Hazardous Substances as determined in accordance with Applicable Law, the Joint Venture Company shall ensure that its employees, agents and subcontractors actually working with such materials in providing the Conforming Wafers, Engineering Wafers, Secondary Silicon, scrapped wafers or DRAM Products hereunder to the Purchasers 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, the Joint Venture Company shall provide each Purchaser with Material Safety Data Sheets (MSDS) either prior to or accompanying any delivery of Conforming Wafers, Engineering Wafers, Secondary Silicon, scrapped wafers or DRAM Products to such Purchaser.

(c) The Joint Venture Company shall indemnify, defend and hold harmless each Purchaser from and against any and all Indemnified Losses suffered or incurred by such Purchaser based on, relating to, or arising under any Environmental Laws and related to the manufacture of Conforming Wafers, Engineering Wafers, Secondary Silicon, scrapped wafers or DRAM Products by the Joint Venture Company.

6.5 Disclaimer. [***]

ARTICLE 7
CONFIDENTIALITY; OWNERSHIP

7.1 Protection and Use of Confidential Information. All information provided, disclosed or obtained in the performance of any of the Parties' activities under this Agreement shall be subject to all applicable provisions of the Mutual Confidentiality Agreement. Furthermore, the terms and conditions of this Agreement shall be considered "Confidential Information" under the Mutual 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 Mutual Confidentiality Agreement, the terms of this Agreement shall control.

7.2 Masks for Stack DRAM Products. Any masks used by the Joint Venture Company to manufacture Stack DRAM Products under this Agreement shall be based on Stack DRAM Designs owned by a Purchaser and shall be treated as "Confidential Information" of such Purchaser under the Mutual Confidentiality Agreement.

ARTICLE 8
INDEMNIFICATION

8.1 General Indemnity. Subject to Article 9:

(a) the Joint Venture Company shall indemnify, defend and hold harmless the Purchaser Indemnified Parties from and against any and all Indemnified Losses based on, or attributable to, [***]

(b) Micron shall indemnify, defend and hold harmless the Joint Venture Company from and against any and all Indemnified Losses based on, or attributable to, [***]; and

(c) NTC shall indemnify, defend and hold harmless the Joint Venture Company from and against any and all Indemnified Losses based on, or attributable to, [***].

8.2 Indemnification Procedures.

(a) Promptly after the receipt by any Purchaser Indemnified Party or the Joint Venture Company (an "**Indemnified Party**") of a notice of any Third Party Claim that may be subject to indemnification under Section 8.1, such Indemnified Party shall give written notice of such Third Party Claim to the Party obligated to provide such indemnification under Section 8.1 (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 [***] 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 9 LIMITATION OF LIABILITY

- 9.1 Damages Limitation. [***].
- 9.2 Exclusions. Section 9.1 shall not apply to Section 6.4(c) or to any Party's breach of Article 7.
- 9.3 Mitigation. Each Party shall have a duty to use commercially reasonable efforts to mitigate damages for which another Party is responsible.

ARTICLE 10 TERM AND TERMINATION; SUPPLY OBLIGATIONS FOLLOWING TRIGGERING EVENT

10.1 Term.

(a) Micron Term. With respect to Micron, the term of this Agreement (the "**Micron Term**") commences on the Closing Date and continues in effect until the date of [***].

(b) NTC Term. With respect to NTC, the term of this Agreement (the "**NTC Term**") commences on the Closing Date and continues in effect until the date of [***].

10.2 Termination. This Agreement [***] (a) by Micron [***], (b) by NTC for any reason, [***], or (c) by the Joint Venture Company [***]. Notwithstanding anything herein to the contrary, upon the occurrence of an [***] (as defined in the Joint Venture Agreement), [***].

10.3 Joint Venture Company Requirements at Termination.

(a) Within [***] days after (x) the end of the Micron Term or (y) the termination of this Agreement pursuant to the last sentence of Section 10.2, the Joint Venture Company:

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(i) shall destroy all production masks obtained for or on behalf of Micron pursuant to Section 2.3(b); and

(ii) shall (A) destroy all copies and other embodiments of any process technology or information provided to the Joint Venture Company by Micron, or any portion thereof, in whatever form received, reproduced or stored, (B) certify to Micron that such destruction is complete, and (C) cease all use of the process technology or information provided to the Joint Venture Company by Micron.

(b) Within [***] days after (x) the end of the NTC Term or (y) the termination of this Agreement pursuant to the last sentence of Section 10.2, the Joint Venture Company:

(i) shall destroy all production masks obtained for or on behalf of NTC pursuant to Section 2.3(b); and

(ii) shall (A) destroy all copies and other embodiments of any process technology or information provided to the Joint Venture Company by NTC, or any portion thereof, in whatever form received, reproduced or stored, (B) certify to NTC that such destruction is complete, and (C) cease all use of the process technology or information provided to the Joint Venture Company by NTC.

10.4 Survival.

(a) Survival of Provisions Applicable to All Parties. Termination of this Agreement with respect to either Purchaser 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 with respect to either Purchaser for any reason: Sections 2.7, 4.2, 4.5, 4.8, 4.9, 4.10, 4.11, 4.12, 4.13, 4.14, 6.1, 6.2, 6.4(c) and 6.5, and Articles 7, 8, 9, 10 and 11.

(b) Survival of the Agreement for Non-Terminating Parties. Upon the termination of this Agreement with respect to Micron as a result of the expiration of the Micron Term, this Agreement shall remain in full force and effect as between NTC and the Joint Venture Company. Upon the termination of this Agreement with respect to NTC as a result of the expiration of the NTC Term, this Agreement shall remain in full force and effect as between Micron and the Joint Venture Company.

ARTICLE 11 **MISCELLANEOUS**

11.1 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 NTC, the Joint Venture Company and, in the event of an assertion by the Joint Venture Company, Micron and NTC specifying the obligation to be excused and describing the events or conditions constituting the Force Majeure Event.

11.2 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.

11.3 Assignment. [***].

11.4 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.

11.5 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 the Joint Venture Company.

Inotera Memories Inc.
Hwa-Ya Technology Park
667, Fuhsing 3rd Road
Kueishan, Taoyuan
Taiwan, ROC.
Fax: 886-3-327-2988 Ext. 3385
Attention: General Counsel

In the case of Micron:

Micron Technology, Inc.
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attn: General Counsel
Facsimile: (208) 368-4537

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In the case of NTC:

Nanya Technology Corporation
Hwa-Ya Technology Park 669
Fuhsing 3 RD. Kueishan
Taoyuan, Taiwan, ROC
Attn: Legal department
Facsimile: 886-3-396-2226

11.6 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.

11.7 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.

11.8 Third Party Rights. Except as expressly provided in Section 8, 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.

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

11.10 Entire Agreement. This Agreement, together with the Schedules hereto and the agreements and instruments expressly provided for herein (including the Mutual 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, between the Parties with respect to the subject matter hereof.

11.11 Choice of 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.

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11.12 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.

11.13 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.

11.14 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.

11.15 Insurance. Without limiting or qualifying the Joint Venture Company's liabilities, obligations or indemnities otherwise assumed by the Joint Venture Company pursuant to this Agreement, the Joint Venture Company shall at all times (except as otherwise stipulated in Appendix I), 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 Appendix I 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 or NTC.

11.16 Initial Implementation of this Agreement. The manufacturing plan currently in effect for the Joint Venture Company shall be deemed to be the initial Manufacturing Plan hereunder. On the Closing Date, NTC shall be deemed to have placed a Purchase Order for the quantity, by Design ID, of Conforming Wafers and Engineering Wafers to be supplied to it by the Joint Venture Company during December 2008 as indicated in the initial Manufacturing Plan. Notwithstanding anything in the PPCRA to the contrary, (a) this Agreement shall govern with respect to any wafers delivered by the Joint Venture Company to a Purchaser during the period beginning on December 1, 2008 and ending on the last day of the Micron Term or the NTC Term, as applicable to such Purchaser, and (b) the PPCRA shall govern with respect to any wafers delivered by the Joint Venture Company to NTC prior to December 1, 2008.

[SIGNATURE PAGES FOLLOW]

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

INOTERA MEMORIES, INC.

By: */s/ Joseph Hsieh*

Name: Joseph Hsieh

Title: Supervisor

**THIS IS A SIGNATURE PAGE FOR THE SUPPLY AGREEMENT ENTERED
INTO BY AND BETWEEN MICRON, NTC AND
JOINT VENTURE COMPANY**

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MICRON TECHNOLOGY, INC.

By: /s/ D. Mark Durcan

D. Mark Durcan

President and Chief Operating Officer

**THIS IS A SIGNATURE PAGE FOR THE SUPPLY AGREEMENT ENTERED
INTO BY AND BETWEEN MICRON, NTC AND
JOINT VENTURE COMPANY**

DLI-6215923v22

NANYA TECHNOLOGY CORPORATION

By: /s/ Jih Lien

Jih Lien

President

**THIS IS A SIGNATURE PAGE FOR THE SUPPLY AGREEMENT ENTERED
INTO BY AND BETWEEN MICRON, NTC AND
JOINT VENTURE COMPANY**

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

**AMENDED AND RESTATED
JOINT DEVELOPMENT PROGRAM AGREEMENT**

This **AMENDED AND RESTATED JOINT DEVELOPMENT PROGRAM AGREEMENT** (this “**Agreement**”), is made and entered into as of this 26th day of November, 2008 (“**Amendment Date**”), by and between Nanya Technology Corporation Nanya Technology Corporation [Translation from Chinese], a company incorporated under the laws of the Republic of China (“**NTC**”), and Micron Technology, Inc., a Delaware corporation (“**Micron**”). (NTC and Micron are referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”).

RECITALS

A. The Parties entered that certain Joint Development Program Agreement dated April 21, 2008 (“**Original Agreement**”) in connection with the formation of MeiYa Technology Corporation, a company-limited-by-shares incorporated under the laws of the Republic of China (“**MeiYa**”).

B. Pursuant to certain of the Joint Venture Documents (as defined hereinafter) and the transactions contemplated thereby, MNL (as defined herein), an Affiliate of Micron, and NTC have acquired an ownership interest in Inotera Memories, Inc., a company incorporated under the laws of the Republic of China (“**IMI**”) for the collaborative manufacture and sale of Stack DRAM Products exclusively to the Parties, and the Parties are combining their ownership and operations of MeiYa with that of the Joint Venture Company such that MeiYa will cease to exist.

C. NTC and Micron desire to continue to engage in joint development of Stack DRAM Designs and Process Technology (each, as defined hereinafter) on process node of [***], or on such other design or process technology, the Parties may agree pursuant to this Agreement. The Parties desire to outline the procedures under which they will pool their respective resources as provided in this Agreement for the purpose of performing research and development work relating to Stack DRAM Designs and Process Technology that will be used by the Joint Venture Company, by NTC, by Micron, and, for up to six (6) months after the Amendment Date, by MeiYa, to manufacture Stack DRAM Products.

D. Accordingly, the Parties desire to amend and restate the Original Agreement to account for the transactions contemplated by the Joint Venture Documents related to IMI 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**

LAI-2977385v6

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.

“**Amendment Date**” 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.

“**ATE**” means automatic test equipment, such as that sold under the trademark ADVENTEST.

“**Burn-In**” means [***].

“**Burn-In Document**” 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.

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

“**Change of Control**” means, with respect to any first Person, the occurrence of any of the following events, whether through a single transaction or series of related transactions: (a) any consolidation or merger of such first Person with or into another Person in which the holders of such first Person’s outstanding voting equity immediately before such consolidation or merger do not, immediately after such consolidation or merger, own or control directly or indirectly equity representing a majority of the outstanding voting equity of the surviving Person; (b) the sale of all or substantially all of such first Person’s assets to another Person wherein the holders of such first Person’s outstanding voting equity immediately before such sale do not, immediately after sale, own or control directly or indirectly equity representing a majority of the outstanding voting equity of the purchaser; or (c) the sale of such first Person’s voting equity to any other Person(s) wherein the holders of such first Person’s outstanding voting equity immediately before such sale do not, immediately after such sale, own or control directly or indirectly equity representing a majority of the outstanding voting equity of such first Person.

“**Closing**” means June 6, 2008, the date of closing of the formation of MeiYa.

“**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 6.1 deemed to be “Confidential Information” under the Mutual Confidentiality Agreement.

“**Contractor**” means a Third Party who (a) is contracted by a Party 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 [***] 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.

“**Coverage Test**” means test solution for module application fail in CP/FT/Module ATE.

“**Deadlock Terminating Party**” shall have the meaning set forth in Section III.D.5 of Schedule 2.

“**Design Qualification**” means, [***].

“**Design SOW**” means [***].

“**Design SOW Costs**” means any and all SOW Costs attributable to a Design SOW in accordance with Schedule 4.

“**Draft**” means the mechanism described in Section 5.3 by which either Micron or NTC may select from [***] to solely own.

“**Drafting Party**” means either Micron or NTC, as the Party selecting a [***] pursuant to the Draft.

“**DRAM Module**” means one or more DRAM Products in a JEDEC-compliant 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 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 [***].

“**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, [***].

“**Foundry Customer**” means a Third Party customer of either NTC or Micron for Stack DRAM Products [***].

“**FT**” means [***].

“**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, or any arbitrator or arbitration panel.

“**Imaging Product**” means any (a) 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, (b) image processor or other semiconductor device for balancing, correcting, manipulating or otherwise processing such electrical representation of the information in the impinging light, or (c) combination of the devices described in clauses (a) and (b).

“**IMI**” has the meaning set forth in the Recitals to this Agreement.

“**Indemnified Claim**” shall have the meaning set forth in [Section 8.2](#).

“**Indemnified Party**” shall have the meaning set forth in [Section 8.2](#).

“**Indemnifying Party**” shall have the meaning set forth in [Section 8.2](#).

“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 [***]

“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 Co-Chairman” and **“JDP Co-Chairmen”** shall have the meaning set forth on Schedule 2.

“JDP Committee” shall mean the committee formed and operated by Micron and NTC to govern the performance of the Parties under this Agreement in accordance with the JDP Committee Charter.

“JDP Committee Charter” means the charter attached as Schedule 2.

“JDP Design” means any Stack DRAM Design resulting from the research and development activities of the Parties pursuant to this Agreement.

“JDP Inventions” shall mean 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 this Agreement.

“JDP Process Node” means any Primary Process Node or Optimized Process Node resulting from the research and development activities of the Parties pursuant this Agreement.

“JDP Work Product” means [***].

“Joint Venture Company” means either IMI or MeiYa, as the context dictates, subject to Section 9.2(f).

“Joint Venture Documents” means (a) with respect to IMI, that certain Joint Venture Agreement between MNL and NTC dated as of the Amendment Date relating to the Joint Venture Company and those documents listed on Schedule A to that Joint Venture Agreement and (b) with respect to MeiYa, that certain Master Agreement by and between Micron and NTC dated as of the Effective Date, the Master Agreement Disclosure Letter by and between Micron and NTC dated as of the Effective Date, and the documents listed on Schedules 2.1 through 2.5 of such disclosure letter, each as amended.

“Lead Product” means [***].

“Mask Data Processing” means [***].

“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.

“**MeiYa**” shall have the meaning set forth in the Recitals to this Agreement.

“**MeiYa Roll-Up**” means the first to occur of the following events, whether through a single transaction or series of related transactions: (a) any consolidation or merger of MeiYa with or into another Person; (b) the sale of all or substantially all of MeiYa’s non-cash assets to another Person; (c) the sale of all or substantially all of MeiYa’s voting equity to any other Persons; and (d) the voluntary or involuntary liquidation, dissolution or winding up of the affairs of MeiYa.

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

“**Micron Indemnitees**” shall have the meaning set forth in Section 8.1.

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

“**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 [***].

“**Mutual Confidentiality Agreement**” means that certain Second Amended and Restated Mutual Confidentiality Agreement dated as of the Amendment Date among NTC, Micron, MNL, MeiYa and IMI.

“**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.

“**NTC**” shall have the meaning set forth in the preamble to this Agreement.

“**NTC Indemnitees**” shall have the meaning set forth in Section 8.1.

“**OPC**” means optical proximity correction of the circuit layout patterns, which is important in Mask Data Processing.

“**Optimized Process Node**” means [***].

“**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 Prosecution**” means (a) preparing, filing and prosecuting patent applications (of all types), and (b) managing any interference, reexamination, reissue, or opposition proceedings relating to the foregoing.

“**Patent Review Committee**” means the committee formed by the JDP Committee to [***].

“**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.

[***]

[***]

“**Post Termination Funding Period**” shall have the meaning set forth in Section III.D.5 of Schedule 2.

“**Primary Process Node**” means [***].

“**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 [***]

“**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 [***] 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, [***].

“**Process SOW**” means any SOW 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 SOW Costs**” means [***].

“**Process Technology**” means that process technology developed 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 as applied to Stack DRAM Products or Stack DRAM Modules.

“Proposing Party” shall have the meaning set forth in Section 3.2.

“Recoverable Taxes” shall have the meaning set forth in Section 4.4.

“Rejecting Party” shall have the meaning set forth in Section 3.2.

“Rejected Development Work” shall have the meaning set forth in Section 3.2.

“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.

“R&D Roadmap” has the meaning provided in Section 2.3.

“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 this Agreement and that has been adopted by the JDP Committee pursuant to Section 3.2.

“SOW Costs” means any or all costs that are incurred by a Party in connection with any SOW as provided on Schedule 4.

“Stack DRAM” means dynamic random access memory cell that functions 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 or as otherwise determined by the JDP Committee in a SOW.

“Stack DRAM Module” means one or more Stack DRAM Products in a JEDEC-compliant 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 comprising Stack DRAM, whether in die or wafer form.

“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.

“**Technology Transfer Agreement**” means (a) with respect to IMI, that certain Technology Transfer Agreement by and among NTC, Micron, and IMI dated as of the Amendment Date, and (b) with respect to MeiYa, that certain Technology Transfer Agreement by and among NTC, Micron and MeiYa dated as of May 13, 2008.

“**Technology Transfer and License Agreement**” means that certain Amended and Restated Technology Transfer and License Agreement by and between NTC and Micron dated as of the Amendment Date.

“**TTLA 68-50**” means that certain Technology Transfer and License Agreement For 68-50NM Process Nodes by and between NTC and Micron dated as of the Effective Date.

“**Term**” shall have the meaning set forth in Section 9.1.

“**Third Party**” means any Person other than NTC or Micron.

“**Unit Process/Module Invention**” means JDP Inventions related to one or more process steps that are performed on a semiconductor wafer and that are designed to achieve a particular feature characteristic or structure.

“**Works Registration**” shall have the meaning set forth in Section 5.4(c).

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
JDP COMMITTEE; R&D ROADMAP

2.1 JDP Committee; Patent Review Committee. Micron and NTC shall form and operate the JDP Committee to govern their performance under this Agreement in accordance with the JDP Committee Charter attached as Schedule 2. The JDP Committee shall form and oversee the Patent Review Committee, which shall also operate in accordance with the applicable provisions of Schedule 2.

2.2 JDP Co-Chairmen. Micron and NTC shall notify the other Party in writing of the identity of the full-time employee of such Party who will serve as its JDP Co-Chairman. Each JDP Co-Chairman shall serve on the JDP Committee as provided in Schedule 2 and shall devote his or her attention to the performance of this Agreement by the Parties. Each of Micron and NTC may replace its respective JDP Co-Chairman upon written notice to the other Party; *provided that* each Party's JDP Co-Chairman must at all times be a full-time employee of such Party.

2.3 R&D Roadmap.

(a) [***]

(b) [***]

(c) The first R&D Roadmap shall contain the Stack DRAM Designs and Process Technology described in the SOWs identified on Schedule 1.

ARTICLE 3
DEVELOPMENT PROJECTS AND SOWS

3.1 Content of SOWs. The Parties expect that each SOW will conform to the following requirements, as applicable:

(a) Each SOW will contain at least the following:

[***]

(b) The Process SOW for each Primary Process Node and each Process SOW effective as of the Effective Date will specify that the work to be performed thereunder will be performed [***].

(c) [***].

(d) Process SOWs for Optimized Process Nodes may specify that the work to be performed thereunder can be performed [***].

(e) Process SOWs entered after the Effective Date for work to be performed [***].

[***]

3.2 Proposal and Adoption of SOWs.

(a) Each Party solely through its JDP Co-Chairman, or both of the Parties jointly through the JDP Chairmen, may submit proposed SOWs to the JDP Committee for consideration and potential adoption as an SOW hereunder. SOWs can be proposed for the design of products that are not at the time of submission Commodity Stack DRAM Products.

(b) [***].

(c) The SOWs identified on Schedule 1 are deemed SOWs under this Agreement adopted by the JDP Committee as of the Effective Date.

(d) [***].

3.3 Development Restrictions; Rejected Development Work.

[***]

3.4 SOW Performance Monitoring.

[***]

3.5 JDP Committee Monitoring. [***]

3.6 On-Site Visitations. Each Party and its Representatives shall observe and be subject to all safety, security and other policies and regulations regarding visitors and contractors while on site at a facility of the other Party or its Affiliate. A Party's Representatives who access any facility of the other Party or its Affiliate shall not interfere with, and except as otherwise agreed by the Parties, shall not participate in, the business or operations of the facility accessed.

3.7 Mask Source Qualification and Mask Purchases.

[***]

3.8 Repository of JDP Work Product.

(a) Micron and NTC each shall use commercially reasonable efforts to each establish a repository in its own facility for storing the JDP Work Product described on Schedules 3, 7, 8 or 9 separately from other technology, information and data of such Party and any Third Parties. Each Party shall implement procedures so that such JDP Work Product is either created in such repository or added to such repository in the English language promptly after creation by employees of such Party, its Existing Entities and its wholly-owned Subsidiaries assigned to an SOW. Such repositories in Micron facilities shall be accessible to employees of NTC, its Existing Entities and its wholly-owned Subsidiaries assigned to perform work under any SOW(s) as reasonably required for such employees to perform their assigned work. Such repositories in NTC shall be accessible to employees of Micron, its Existing Entities and its wholly-owned Subsidiaries assigned to perform work under any SOW as reasonably required for such employees to perform their assigned work. The JDP Co-Chairmen and JDP Committee Members shall have full access to such repositories. Once both such repositories are operational electronic databases that can be synchronized at least with the other database to contain the same content as that stored in such other database, the Parties shall use commercially reasonable efforts to have the databases automatically and electronically synchronized at least once per day.

(b) Without limiting the foregoing Section 3.8(a), the Parties shall also use their respective commercially reasonable efforts to accomplish the following within the time frames described below:

(i) Phase 1:

- 1) Establish secure network connectivity between Micron and NTC within [***] after the Effective Date.
- 2) Establish secure email between Micron and NTC within [***] after the Effective Date.
- 3) Establish a FTP environment to allow download of data between Micron and NTC within [***] after the Effective Date.

(ii) Phase 2:

- 1) Establish an initial repository for the JDP Work Product described on Schedules 3, 7, 8 or 9 with a publishing document process between Micron and NTC within [***] after the Effective Date. The replication process between Micron's and NTC's repositories would occur every twelve (12) to twenty-four (24) hours.
- 2) Provide a single remote access point for approved users within [***] after the Effective Date. This access point will allow real time equal access to all individuals assigned to an SOW.

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(iii) Phase 3:

- 1) For the remote access point from NTC each approved NTC user will be provided access to approved Micron secured operational applications. The first group of secured operational applications will be provided within [***] after the Effective Date.

ARTICLE 4 **PAYMENTS**

4.1 Development Cost Sharing. Micron and NTC shall share SOW Costs as specified on Schedule 4.

4.2 Payments. All amounts owed by a Party under this Agreement are stated, calculated and shall be paid in United States Dollars (\$ U.S.).

4.3 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 [***], or the highest rate permitted by Applicable Law, whichever is lower.

4.4 Taxes.

(a) All sales, use and other transfer Taxes imposed directly on or solely as a result of the services or technology transfers or the payments therefor provided herein shall be stated separately on the service provider's or technology transferor's invoice, collected from the service provider or technology transferor and shall be remitted by service provider or technology transferor to the appropriate Taxing Authority ("**Recoverable Taxes**"), unless the service recipient or technology transferee provides valid proof of tax exemption prior to the Effective Date or otherwise as permitted by law prior to the time the service provider or technology transferor is required to pay such taxes to the appropriate Taxing Authority. When property is delivered and/or services are provided or the benefit of services occurs within jurisdictions in which collection and remittance of Taxes by the service recipient or technology transferee is required by law, the service recipient 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 or technology transferor does not collect such Taxes from the service recipient 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 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 4.4(b), Taxes other than Recoverable Taxes shall not be reimbursed by the service recipient 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 or technology transferee is prohibited by Applicable Law from making payments to the service provider or technology transferor unless the service recipient or technology transferee deducts or withholds Taxes therefrom and remits such Taxes to the local Taxing Authority, [***].

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ARTICLE 5
INTELLECTUAL PROPERTY

5.1 Existing IP. Nothing in this Agreement shall be construed to transfer ownership of or grant a license under any IP Rights, Patent Rights or other intellectual property or technology of a Party existing as of the Effective Date from one Party to the other Party. Any license to any of the foregoing shall be governed by the Technology Transfer and License Agreement.

5.2 ***] Procedures; Inventorship; Authorship.

(a) Within forty-five (45) days of the Effective Date, each of the Parties shall introduce procedures to encourage and govern the submission of disclosures of JDP Inventions by their respective Representative(s) involved in a SOW, whether as Representatives of NTC, of Micron or of a Joint Venture Company, to the JDP Co-Chairmen for subsequent submission to the JDP Committee. Such procedures shall include (i) a policy statement encouraging the submission of such invention disclosures, (ii) appropriate invention disclosure forms, and (iii) a commitment on the part of each of NTC and Micron to obtain relevant invention disclosure forms from their respective Representatives with respect to JDP Inventions and to submit such forms for review by the Patent Review Committee. Each of the Parties shall actively administer such procedures and submit and cause their respective Representatives promptly to complete and submit invention disclosures on JDP Inventions to the Patent Review Committee.

(b) Inventorship for JDP Inventions shall be determined in accordance with United States patent laws.

(c) Authorship for all JDP Work Product, whether registered or not, shall be determined in accordance with United States copyright laws and laws concerning Mask Work Rights, as applicable.

5.3 JDP Inventions; Pool and Draft.

[***]

5.4 Ownership of JDP Inventions and JDP Work Product.

(a) As between the Parties, [***].

(b) Except as provided in Sections 5.3 and 5.4(a), all JDP Designs, JDP Inventions, JDP Process Nodes, JDP Work Product, and all IP Rights associated with any of the foregoing, shall be, [***]. Subject to any applicable provisions of the Joint Venture Documents, each of Micron and NTC may exploit their interest in any JDP Designs, JDP Inventions, JDP Process Nodes, JDP Work Product, and IP Rights associated therewith without a duty of accounting to any other Party.

(c) [***]

5.5 Costs. All out-of-pocket costs and expenses relating to Patent Prosecution, including attorneys' fees, incurred by a Party pursuant to this Agreement shall be borne solely by the owner thereof. In the case of Works Registrations for JDP Work Product, such joint owners shall split the costs thereof equally.

5.6 Cooperation. With respect to all Patent Prosecution and Works Registration activities under this Agreement, each Party shall:

(a) execute all further instruments to document their respective ownership consistent with this Article 5 as reasonably requested by any other Party, including causing its respective Representatives to execute written assignments of JDP Inventions and JDP Work Product to Micron, NTC or both of them jointly as provided herein (at no cost to the assignee); and

(b) using commercially reasonable efforts to make its Representatives available to the other Party (or to the other Party's authorized attorneys, agents or Representatives), to the extent reasonably necessary to enable the appropriate Party hereunder to undertake Patent Prosecution and Works Registration.

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5.7 Third Party Infringement.

(a) The sole owner of the Patent Rights with respect to any JDP Invention shall have the exclusive right to institute and direct legal proceedings against any Third Party believed to be infringing or otherwise violating any such Patent Rights.

(b) If any Party takes action pursuant to Section 5.7(a), then the other Party shall cooperate to the extent reasonably necessary and at the first Party's sole expense and subject to the first Party's request. To the extent required by Applicable Law, such other Party shall join the action and, if such other Party elects, may choose to be represented in any such legal proceedings using counsel of its own choice, and at its own expense. Each Party shall assert and not waive the joint defense privilege with respect to all communications between the Parties reasonably the subject thereof.

(c) The Parties shall keep each other informed of the status of any litigation or settlement thereof initiated by a Third Party concerning a Party's manufacture, production, use, development, sale, offer for sale, importation, exportation or distribution of Stack DRAM Products manufactured by a Joint Venture Company; *provided, however*, that no settlement or consent judgment or other voluntary final disposition of a suit under this Section 5.7(c) may be undertaken by a Party without the consent of another Party (which consent not to be unreasonably withheld) if such settlement would require such other Party or a Joint Venture Company to be subject to an injunction, subject to a requirement to alter a Process Node or Stack DRAM Design, admit wrongdoing or make a monetary payment. The Party sued by the Third Party as contemplated by this Section shall not object to joinder in such action by the other Party to the extent such joinder is permitted by Applicable Law.

5.8 No Other Rights or Licenses. Except for the allocation of ownership of JDP Inventions and JDP Work Product, and the ownership of their corresponding Patent Rights and IP Rights therein, as stated in this Article 5, no right, license, title or interest under any intellectual property is granted under this Agreement, whether by implication, estoppel or otherwise. Certain rights, licenses and covenants not to sue under Intellectual Property of Micron and NTC are granted in other Joint Venture Documents.

ARTICLE 6 **CONFIDENTIALITY**

6.1 Confidentiality Obligations.

(a) All information (including JDP Work Product, JDP Inventions, JDP Process Nodes and JDP Designs and Foundational Know-How) provided, disclosed, created or obtained in connection with this Agreement or the performance of any of the Parties' activities under this Agreement, including the performance of activities under a SOW, shall be deemed "Confidential Information" subject to all applicable provisions of the Mutual Confidentiality Agreement. The terms and conditions of this Agreement shall also be considered "Confidential Information" under the Mutual Confidentiality Agreement for which each Party shall be considered a "Receiving Party" under such agreement.

(b) Additionally, notwithstanding whether one of the Parties solely or jointly owns JDP Inventions, JDP Work Product, JDP Process Nodes and JDP Designs and IP Rights or Patent Rights therein in accordance with this Agreement, each of the Parties shall be deemed a “Receiving Party” under the Mutual Confidentiality Agreement with respect to information embodied therein and no Party may contribute, transfer or disclose any JDP Inventions, JDP Work Product, JDP Process Nodes, JDP Designs or IP Rights or Patent Rights therein to any Third Party except as provided in Section 6.2.

6.2 Permitted Disclosures. Notwithstanding the restrictions in Section 6.1:

(a) NTC and Micron may contribute, transfer and disclose any Confidential Information described in Section 6.1(b) to their respective Existing Entities and wholly owned Subsidiaries, *provided that*, at the time of such contribution, transfer or disclosure, such Existing Entity is an Affiliate of the Party seeking to contribute, transfer or disclose such Confidential Information.

(b) Each of Micron and 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 Micron or NTC necessary to conduct Patent Prosecution on the JDP Inventions owned by such Party.

(c) Micron may disclose any Confidential Information described in Section 6.1 to any Third Party who is not a manufacturer of [***], *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 and shall be subject to a written obligation of confidentiality that is no less restrictive than that applicable to the Parties under the Mutual Confidentiality Agreement.

(d) NTC may disclose any Confidential Information described in Section 6.1(b) to any Third Party who is not a manufacturer of [***], *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 Micron, its Existing Entities or Intel Corporation, including Patent Rights of Micron on JDP Inventions and shall be subject to a written obligation of confidentiality that is no less restrictive than that applicable to the Parties under the Mutual Confidentiality Agreement. [***].

(e) [***]

6.3 Conflicts. To the extent there is a conflict between this Agreement and the Mutual Confidentiality Agreement, the terms of this Agreement shall control.

ARTICLE 7
WARRANTIES; DISCLAIMERS

7.1 No Implied Obligation. 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 JDP Work Product or JDP Inventions 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 or conferring any right to bring or prosecute proceedings against Third Parties for infringement; 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.

7.2 Third Party Software. Use of any JDP Inventions or JDP Work Product exchanged between the Parties under this Agreement may require use of Software owned by a Third Party and not subject to any license granted under any of the Joint Venture Documents. 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 the 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.

7.3 Disclaimer. [***].

ARTICLE 8

INDEMNIFICATION; LIMITATION OF LIABILITY

8.1 Indemnification.

(a) Micron shall indemnify and hold harmless NTC, its Affiliates and their respective directors, officers, employees, agents and other representatives (“**NTC Indemnitees**”) from and against any and all Losses suffered by the NTC Indemnitees relating to personal injury (including death) or property damage to the extent such injury or damage was caused by the gross negligence or willful misconduct of any employee of Micron or its Affiliate while at any facilities of NTC or its Affiliate and such gross negligence, willful misconduct or Losses were not caused by any NTC Indemnitee.

(b) NTC shall indemnify and hold harmless Micron, its Affiliates and their respective directors, officers, employees, agents and other representatives (“**Micron Indemnitees**”) from and against any and all Losses suffered by the Micron Indemnitees relating to personal injury (including death) or property damage to the extent such injury or damage was caused by the gross negligence or willful misconduct of any employee of NTC or its Affiliate while at any facilities of Micron or its Affiliate and such gross negligence, willful misconduct or Losses were not caused by any Micron Indemnitee.

8.2 Indemnity Procedure.

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(a) Any Person who or which is entitled to seek indemnification under Section 8.1 (an “**Indemnified Party**”) shall promptly notify the other Party (“**Indemnifying Party**”) of any such Losses for which it seeks indemnification hereunder. Failure of the Indemnified Party to give such notice shall not relieve the Indemnifying Party from Losses on account of this indemnification, except if and only to the extent that the Indemnifying Party is actually prejudiced thereby. 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 Losses and underlying facts and circumstances. The Indemnifying Party shall have the right to assume the defense of the Indemnified Party with respect to any legal action relating to such Losses (“**Indemnified Claim**”) upon written notice to the Indemnified Party delivered within thirty (30) days after receipt of the particular notice from the Indemnified Party.

(b) So long as the Indemnifying Party has assumed the defense of the Indemnified Claim in accordance herewith and notified the Indemnified Party in writing thereof, (1) the Indemnified Party may retain separate co-counsel, at its sole cost and expense, and participate in the defense of the Indemnified 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 Indemnified Claim and prior to such time as the Indemnifying Party has notified the Indemnified Party that it has assumed the defense of such Indemnified Claim, (2) the Indemnified Party shall not consent to the entry of any judgment or enter into any settlement with respect to a Indemnified Claim without the prior written consent of the Indemnifying Party (not to be unreasonably withheld, conditioned or delayed) and (3) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Indemnified Claim to be paid by an Indemnifying Party (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).

(c) The Indemnified Party and Indemnifying Party shall cooperate in the defense of each Indemnified Claim (and the Indemnified Party and the Indemnifying Party agree with respect to all such Indemnified Claims that a common interest privilege agreement exists between them), including by (1) permitting the Indemnifying Party to discuss the Indemnified Claim with such officers, employees, consultants and representatives of the Indemnified Party as the Indemnifying Party reasonably requests, (2) providing to the Indemnifying Party copies of documents and samples of products as the Indemnifying Party reasonably requests in connection with defending such Indemnified Claim, (3) preserving all properties, books, records, papers, documents, plans, drawings, electronic mail and databases relating to matters pertinent to the Indemnified Claim and 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 Indemnified Party, (4) 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, and (5) 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. In connection with any claims, unless otherwise ordered by a court, the Indemnified Party shall not produce documents to a Third Party until the Indemnifying Party has been provided a reasonable opportunity to review, copy and assert privileges covering such documents, except to the extent (x) inconsistent with the Indemnified Party’s obligations under Applicable Law and (y) where to do so would subject the Indemnified Party or its employees, agents or representatives to criminal or civil sanctions.

ARTICLE 9
TERM AND TERMINATION

9.1 Term. The term of this Agreement commences on the Effective Date and continues in effect until terminated in accordance with Section 9.2; *provided, however*, that the amendments made to the Original Agreement by this Agreement commence upon the Amendment Date. (The period from the Effective Date until termination is the “**Term**”).

9.2 Termination of this Agreement.

(a) Unless otherwise mutually agreed, [***].

(b) Either Party may terminate this Agreement [***].

(c) Either Party may terminate this Agreement by notice to the other Party if the other Party commits a material breach of this Agreement and such breach remains uncured [***].

(d) Either Party may terminate this Agreement immediately upon notice to the other Party in the event of either (i) a Change of Control of the other Party; (ii) the other Party becomes bankrupt or insolvent, or files a petition in bankruptcy or makes a general assignment for the benefit of creditors or otherwise acknowledges in writing insolvency, or is adjudged bankrupt, and such Party (A) fails to assume this Agreement in any such bankruptcy proceeding within thirty (30) days after filing or (B) assumes and assigns this Agreement to a Third Party in violation of Section 10.3; (iii) the other Party goes into or is placed in a process of complete liquidation; (iv) a trustee or receiver is appointed for any substantial portion of the business of the other Party and such trustee or receiver is not discharged within sixty (60) days after appointment; (v) any case or proceeding shall have been commenced or other action taken against the other Party in bankruptcy or seeking liquidation, reorganization, dissolution, a winding-up arrangement, composition or readjustment of its debts or any other relief under any bankruptcy, insolvency, reorganization or similar act or law of any jurisdiction now or hereafter in effect and is not dismissed or converted into a voluntary proceeding governed by clause (ii) above within sixty (60) days after filing; or (vi) there shall have been issued a warrant of attachment, execution, distraint or similar process against any substantial part of the property of the other Party and such event shall have continued for a period of sixty (60) days and none of the following has occurred: (A) it is dismissed, (B) it is bonded in a manner reasonably satisfactory to the other of Micron or NTC, or (C) it is discharged.

(e) The [***] may terminate this Agreement in accordance with Section III.D.5 of Schedule 2.

(f) Any provision in this Agreement that contains any obligation to “each Joint Venture Company”, “a Joint Venture Company”, “the Joint Venture Company”, or MeiYa shall, subject to Section 9.4, terminate as such provision is applicable to MeiYa upon the first to occur of (i) the MeiYa Roll-Up and (ii) six (6) months after the Amendment Date.

9.3 SOWs.

(a) The term of any SOW (together with the portions of this Agreement applicable to such SOW(s)) commences upon the effective date set forth in the SOW and continues in effect until the first to occur of: (i) completion of the work to be performed thereunder, as determined in accordance with the applicable SOW and (ii) the JDP Committee agrees to terminate the work under a SOW or the SOW.

(b) Micron or NTC may terminate any SOW by notice to the other Party if such other Party commits a material breach of this Agreement with respect to such SOW and such breach remains uncured for more than thirty (30) days after notice of the breach.

(c) Termination of any or all SOW(s) does not automatically terminate this Agreement. Termination of this Agreement automatically terminates all SOW(s), unless otherwise mutually agreed by Micron and NTC.

9.4 Effects of Termination.

(a) Termination of this Agreement shall not affect any of the Parties’ respective rights accrued or obligations owed before termination. In addition, the following shall survive termination of this Agreement for any reason: Articles 1, 4, 6, 7, 8 and 10 and Sections 5.1, 5.2(b) and 5.2(c), 5.3 through 5.6, 5.8 and 9.4.

(b) Upon termination of any SOW for any reason, each Party’s delivery obligation with respect to any JDP Work Product produced thereunder before such termination shall survive such termination. Moreover, termination of a SOW shall not affect payment obligations accrued prior to the date of such termination in connection with such SOW.

(c) The JDP Committee and the Patent Review Committee shall continue to exist and operate in accordance with Schedule 2 after termination as long as necessary to continue to carryout the provisions of this Agreement that survive termination in accordance therewith.

(d) Upon termination of this Agreement by a Deadlock Terminating Party, each of the Parties shall have those post-termination obligations specified in Section III.D.5 of Schedule 2 for the Post Termination Funding Period, if applicable.

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):

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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: 208.368.4537

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. [***].

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. Except as provided in Sections 5.2(b) and (c), 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.

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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 SOWs 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 and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof.

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.]

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IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the Amendment Date.

NANYA TECHNOLOGY CORPORATION

By: /s/ Jih Lien
Name: Jih Lien
Title: President

[Signature page follows.]

**THIS IS A SIGNATURE PAGE FOR THE AMENDED AND RESTATED JOINT DEVELOPMENT PROGRAM AGREEMENT ENTERED INTO BY
AND BETWEEN NTC AND MICRON**

LAI-2977385v6

MICRON TECHNOLOGY, INC.

By: /s/ D. Mark Durcan
Name: D. Mark Durcan
Title: President and Chief Operating Officer

**THIS IS A SIGNATURE PAGE FOR THE AMENDED AND RESTATED JOINT DEVELOPMENT PROGRAM AGREEMENT ENTERED INTO BY
AND BETWEEN NTC AND MICRON**

LAI-2977385v6

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

**AMENDED AND RESTATED
TECHNOLOGY TRANSFER AND LICENSE AGREEMENT**

This **AMENDED AND RESTATED TECHNOLOGY TRANSFER AND LICENSE AGREEMENT** (this “**Agreement**”), is made and entered into as of this 26th day of November, 2008 (“**Amendment Date**”), 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. NTC and Micron desire to engage in joint development and/or optimization of Process Technology for process nodes of 68 nm, 50nm and other dimensions and joint development of Stack DRAM Designs (as defined herein) for Stack DRAM Products to be manufactured on such process nodes, as the Parties may agree in the JDP Agreement (as defined herein).

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 for the design, development and manufacture of certain Stack DRAM Products pursuant to that certain Technology Transfer and License Agreement between Micron and NTC dated April 21, 2008 (“**Original Agreement**”). Pursuant to the Original Agreement, Micron and NTC have also transferred each other Foundational Know-How and licensed each other thereunder for the design, development and manufacture of certain Stack DRAM Products.

C. An Affiliate of Micron and NTC have become parties to that certain Joint Venture Agreement dated as of the Amendment Date 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 with therewith are combining their ownership and operations of MeiYa with that of IMI such that MeiYa will cease to exist.

D. Accordingly, the Parties desire to amend and restate the Original Agreement to account for the transactions contemplated by the Joint Venture Documents (as defined below) related to IMI upon the terms and conditions set forth herein.

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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 [***].

“**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**” shall have the meaning set forth in the preamble to this Agreement.

“**Background IP**” means [***].

“**BEOL Costs**” means [***].

“**Burn-In**” means [***].

“**Burn-In Document**” 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.

“**Closing**” means June 6, 2008, the date of closing of formation of MeiYa.

“**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.

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“**Contractor**” means a Third Party who (a) is contracted by a Party 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 [***] 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.

“**Design Qualification**” means, [***].

“**Design SOW**” means [***].

“**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 [***].

“**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, [***].

“**Foundry Customer**” means a Third Party customer for Stack DRAM Products for which [***].

“**Foundry Customer Adjusted Revenues**” means [***].

“**Foundry Customer Products**” means [***].

“**FT**” means [***].

“**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, [***].

“**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.

“**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 [***]

“**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 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.

“**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.

“**JDP IP Royalties**” means [***].

“**JDP Process Node**” means any Primary Process Node or Optimized Process Node resulting from the research and development activities of the Parties pursuant the JDP Agreement.

“**JDP Work Product**” means [***].

“**Joint Venture Company**” means either IMI or MeiYa, as the context dictates.

“**Joint Venture Documents**” means (a) with respect to IMI, that certain Joint Venture Agreement between MNL and NTC dated as of the Amendment Date relating to the Joint Venture Company and those documents listed on Schedule A to that certain Joint Venture Agreement; and (b) with respect to MeiYa, that certain Master Agreement by and between Micron and NTC dated as of the Effective Date, the Master Agreement Disclosure Letter by and between Micron and NTC dated as of the Effective Date, and the documents listed on Schedules 2.1 through 2.5 of such disclosure letter, each as amended.

“**Mask Data Processing**” means [***].

“**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.

“**MeiYa**” shall have the meaning set forth in the Recitals to this Agreement.

“**MeiYa Roll-Up**” means the first to occur of the following events, whether through a single transaction or series of related transactions: (a) any consolidation or merger of MeiYa with or into another Person; (b) the sale of all or substantially all of MeiYa’s non-cash assets to another Person; (c) the sale of all or substantially all of MeiYa 's voting equity to any other Persons; and (d) the voluntary or involuntary liquidation, dissolution or winding up of the affairs of MeiYa.

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

“**Micron IP Royalties**” mean any royalties owed by NTC to Micron under the TTLA 68-50.

“**Micron Qualified Fab**” means [***].

“**Micron Products**” means [***].

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

“**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 [***].

“**Mutual Confidentiality Agreement**” means that certain Second Amended and Restated Mutual Confidentiality Agreement dated as of the Amendment Date among NTC, Micron, MNL, MeiYa and IMI.

“**NTC**” shall have the meaning set forth in the preamble to this Agreement.

“**NTC Products**” means [***].

“**NTC Qualified Fab**” means [***].

“**OPC**” means optical proximity correction of the circuit layout patterns, which is important in Mask Data Processing.

“Optimized Process Node” means [***].

“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 [***].

“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 [***].

“Process Node” means [***].

“Process Qualification” means, [***].

“Process SOW” means [***].

“Process Technology” means that process technology developed 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 as applied to Stack DRAM Products or Stack DRAM Modules.

“RASL” means that certain Amended and Restated Restricted Activities Side Letter agreement by and between the Parties effective 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.

“**Royalties**” means [***].

“**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 and that has been adopted by the JDP Committee pursuant to the procedures set forth therein.

“**Stack DRAM**” means dynamic random access memory cell that functions 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 as otherwise determined by the JDP Committee in a SOW.

“**Stack DRAM Module**” means one or more Stack DRAM Products in a JEDEC-compliant 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 comprising Stack DRAM, whether in die or wafer form.

“**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.

“**Supply Agreement**” means that certain Supply Agreement by and among NTC, Micron and IMI dated as of the Amendment Date.

“**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 68-50**” means that certain Technology Transfer and License Agreement for 68-50nm Process Nodes by and between the Parties dated as of the Effective Date.

[***]

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 and the applicable terms of the Joint Venture Documents, Micron grants to NTC [***]:

[***]

2.2 NTC Grant to Micron. Subject to the terms and conditions of this Agreement and the applicable terms of the Joint Venture Documents, NTC grants to Micron a [***]:

[***]

2.3 Rights Following Termination of JDP Agreement. Upon termination of the JDP Agreement, [***].

2.4 Reservations of Rights.

[***]

ARTICLE 3

SERVICES

3.1 Assistance For Qualification of Second Source for Mask Purchases. As reasonably requested by NTC and to the extent fulfilling such request would not cause disruption of Micron's operations, Micron will use commercially reasonable efforts to assist NTC in providing the JDP Committee the information necessary for it to qualify a second source [***].

3.2 [***] As reasonably requested by NTC and to the extent fulfilling such request would not cause disruption of Micron's operations, [***].

ARTICLE 4

PAYMENTS

4.1 Royalties for JDP Process Nodes of [***]

4.2 [***]

4.3 Royalty Reporting and Payment. Within sixty (60) days following the end of [***] for so long as any 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, [***]. NTC shall pay to Micron all Royalties due for such [***] contemporaneously with the submission of such report in accordance with Section 4.5. NTC shall cause each of its Affiliates who dispose of Stack DRAM Product in a manner that causes Royalties to be due to provide a written report, which is certified by the Affiliate's chief financial officer as complete and correct, setting forth in reasonable detail such Affiliate's dispositions of Stack DRAM Product and corresponding 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 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 Royalties in the [***] 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 [***] their creation, keep complete and accurate records and books of accounts concerning all transactions relevant to calculation of 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 Royalties to be due to keep records and permit an audit of such records consistent with the obligations of NTC hereunder. [***].

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:

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(i) Invoices to NTC:

[***]
Nanya Technology Corp.
Hwa-Ya Technology Park 669, Fuhsing 3 Rd. Kueishan, Taoyuan, Taiwan, R. O. C.
[***]

(ii) Reports to Micron:

[***]
8000 S. Federal Way
P.O. Box 6, MS 1-720
Boise, Idaho, USA 83707-0006
[***]

(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
[***]

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 [***] or the highest rate permitted by Applicable Law, whichever is lower.

4.7 Taxes.

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(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 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, [***].

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 [***] 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. [***].

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;

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(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 Joint Venture Documents. 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 the 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. [***].

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 [***]

ARTICLE 7

LIMITATION OF LIABILITY

7.1 LIMITATION OF LIABILITY. [***].

ARTICLE 8

CONFIDENTIALITY

8.1 Confidentiality Obligations. Subject to the rights expressly granted to the Parties hereunder and any applicable restrictions under the other Joint Venture Documents, all information provided, disclosed or obtained in connection with this Agreement, the TTLA 68-50 or the performance of any of the Parties' activities 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 Mutual Confidentiality Agreement 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 are subject to restrictions on disclosure set forth therein.

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.

[***]

8.4 NTC Foundational Know-How.

[***]

8.5 Conflicts. To the extent there is a conflict between this Agreement and the Mutual Confidentiality Agreement, 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.

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 Original Agreement by this Agreement commence on the Amendment Date. (The period from the Effective Date until termination is the “**Term**”).

9.2 Termination of License.

(a) In the event either [***], the other party may terminate [***] An inadvertent disclosure by one Party or a Party’s Representative of the other Party’s Confidential Information in violation of this Agreement or the Mutual Confidentiality Agreement, 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 or in the Mutual Confidentiality Agreement.

[***]

9.3 Effects of Termination.

(a) Termination of this Agreement or a Party’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 2.4, 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 a Party’s license under this Agreement pursuant to Section 9.2(a), the Party whose license was terminated shall:

[***]

(c) Upon termination of NTC's license under this Agreement pursuant to Section 9.2(b), NTC shall:

[***]

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: 208.368.4537

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. [***].

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.

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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 and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof.

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 Amendment Date.

MICRON TECHNOLOGY, INC.

By: /s/ D. Mark Durcan

Name: D. Mark Durcan

Title: President and Chief Operating Officer

[Signature page follows.]

**THIS IS A SIGNATURE PAGE FOR THE AMENDED AND RESTATED TECHNOLOGY TRANSFER AND LICENSE AGREEMENT ENTERED
INTO BY AND BETWEEN MICRON AND NTC**

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NANYA TECHNOLOGY CORPORATION

By: /s/ Jih Lien

Name: Jih Lien

Title: President

**THIS IS A SIGNATURE PAGE FOR THE AMENDED AND RESTATED TECHNOLOGY TRANSFER AND LICENSE AGREEMENT ENTERED
INTO BY AND BETWEEN MICRON AND NTC**

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

TECHNOLOGY TRANSFER AGREEMENT

This **TECHNOLOGY TRANSFER AGREEMENT** (this “**Agreement**”), is made and entered into as of this 26th day of November, 2008 (“**Effective Date**”), by and among Nanya Technology Corporation Nanya Technology Corporation [Translation from Chinese] , a company incorporated under the laws of the Republic of China (“**NTC**”), Micron Technology, Inc, a Delaware corporation (“**Micron**”), and Inotera Memories, Inc., a company-limited-by-shares incorporated under the laws of the Republic of China (“**Joint Venture Company**”). (NTC, Micron and Joint Venture Company are referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”).

RECITALS

A. Pursuant to the Joint Venture Documents (as defined hereinafter) and the transactions contemplated thereby, an Affiliate of Micron, Micron Semiconductor B.V., a private limited liability company organized under the laws of the Netherlands (“**MNL**”), has purchased an ownership interest in the Joint Venture Company to manufacture Stack DRAM Products (as defined hereinafter) for supply and delivery solely to Micron and NTC.

B. The Parties desire to outline the procedures under which Micron and NTC will transfer certain technology related to Process Nodes (as defined hereafter) to the Joint Venture Company that will be used by the Joint Venture Company to manufacture Stack DRAM Products for Micron and NTC.

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.

“**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.

“**Assigned Employees**” shall, with respect to Micron, have the meaning set forth in the Micron Assigned Employee Agreement by and between Micron and the Joint Venture Company dated as of the Effective Date and, with respect to NTC, have the meaning set forth in the NTC Assigned Employee Agreement by and between NTC and the Joint Venture Company dated as of Effective Date.

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

“**Confidential Information**” means that information described in Section 5.1 deemed to be “Confidential Information” under the Mutual Confidentiality Agreement.

“**Contractor**” means a Third Party who (a) is contracted by a Party 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 [***] 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.

“**Effective Date**” shall have the meaning set forth in the preamble 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).

“**GAAP**” means, with respect to Micron, United States generally accepted accounting principles, and with respect to NTC and the Joint Venture Company, 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, or any arbitrator or arbitration panel.

“**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 the Effective Date.

“**JDP Co-Chairman**” and “**JDP Co-Chairmen**” means the JDP Co-Chairman or JDP Co-Chairmen, respectively, appointed by Micron or NTC under the JDP Agreement, as such individuals are communicated to the Joint Venture Company from time to time.

“**JDP Committee**” means the committee formed and operated by Micron and NTC to govern the performance of the Parties under the JDP Agreement.

“**JDP Design**” means any Stack DRAM Design resulting from the research and development activities of the Parties pursuant to the JDP 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.

“**JDP Process Node**” means any Primary Process Node or Optimized Process Node resulting from the research and development activities of the Parties pursuant the JDP Agreement.

“**JDP Work Product**” means [***].

“**Joint Venture Company**” shall have the meaning set forth in the preamble to this Agreement.

“**Joint Venture Documents**” means that certain Joint Venture Agreement between MNL and NTC dated as of the Effective Date relating to the Joint Venture Company and the agreements listed on Schedule A of that agreement.

“**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.

“**MeiYa**” means MeiYa Technology Corporation, a company-limited-by-shares incorporated under the laws of the Republic of China.

“**Micron**” shall have the meaning set forth in the preamble to this Agreement

“**MNL**” shall have the meaning set forth in the Recitals to this Agreement.

“**Mutual Confidentiality Agreement**” means that certain Second Amended and Restated Mutual Confidentiality Agreement dated as of the Effective Date among NTC, Micron, MNL, MeiYa and the Joint Venture Company.

“**Optimized Process Node**” means [***].

“**NTC**” shall have the meaning set forth in the preamble to this Agreement.

“**Party**” and “**Parties**” shall have the meaning set forth in the preamble to this Agreement

“**Patent Prosecution**” means (a) preparing, filing and prosecuting patent applications (of all types), and (b) managing any interference, reexamination, reissue, or opposition proceedings relating to the foregoing.

“**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 [***].

“**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 [***].

“**Process Technology**” means that process technology developed 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 as applied to Stack DRAM Products or Stack DRAM Modules.

“Recoverable Taxes” shall have the meaning set forth in Section 3.5(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.

“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 JDP Agreement and that has been adopted by the JDP Committee pursuant to the procedures set forth therein.

“Stack DRAM” means dynamic random access memory cell that functions 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 1 or as otherwise determined by the JDP Committee in a SOW.

“Stack DRAM Module” means one or more Stack DRAM Products in a JEDEC-compliant 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 comprising Stack DRAM, whether in die or wafer form.

“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 Micron, NTC or the Joint Venture Company.

“**TTA 68-50**” means the Technology Transfer Agreement For 68-50nm Process Nodes by and between Micron and the Joint Venture Company signed on October 11, 2008 but effective as of the Effective Date.

“**TTLA**” means the Amended and Restated Technology Transfer and License Agreement dated as of the Effective Date by and between Micron and NTC.

“**Works Registration**” means any registrations of any JDP Work Product.

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, any of the Parties by reason of the extent to which (1) any 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
TRANSFER OF TECHNOLOGY TO JOINT VENTURE COMPANY

2.1 Delivery of JDP Process Nodes and JDP Designs to Joint Venture Company. Micron and NTC shall transfer to the Joint Venture Company JDP Work Product associated with JDP Process Nodes and JDP Designs in the form and at the time(s) and manner as mutually agreed in writing by NTC and Micron and as approved by the Board of Directors of the Joint Venture Company.

2.2 Mask Purchases. As reasonably requested by the Joint Venture Company and to the extent fulfilling such request would not cause disruption of Micron’s operations, Micron will use commercially reasonable efforts to assist the Joint Venture Company [***].

2.3 On-Site Visitations. Each Party and its Representatives shall observe and be subject to all safety, security and other policies and regulations regarding visitors and contractors while on site at a facility of the other Party or its Affiliate. A Party's Representatives who access any facility of the other Party or its Affiliate shall not interfere with, and except as otherwise agreed by the Parties, shall not participate in, the business or operations of the facility accessed.

ARTICLE 3
PAYMENTS

3.1 Technology Transfers of Primary Process Nodes to Joint Venture Company. Upon the completion of the transfer to the Joint Venture Company of each Primary Process Node that is a JDP Process Node [***], as such completion is defined in the applicable Process SOW or otherwise agreed by Micron and NTC, the Joint Venture Company shall pay to each of Micron and NTC an amount [***].

3.2 Joint Venture Company Development Costs. [***].

3.3 Invoices; Payments.

(a) All invoices under this Agreement may be sent by any method described in Section 8.1 or electronically with hardcopy confirmation sent promptly thereafter by any method described in Section 8.1. Such 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 8.1:

Invoices to Joint Venture Company:

[***]
Inotera Memories, Inc.
Hwa-Ya Technology Park
667, Fuhsing 3 Rd., Kueishan, Taoyuan
Taiwan, R.O.C.
[***]

Invoices to NTC:

[***]
Nanya Technology Corp.
Hwa-Ya Technology Park 669, Fuhsing 3 Rd. Kueishan, Taoyuan, Taiwan, R. O. C.
[***]

Invoices to Micron:

[***]
8000 S. Federal Way
P.O. Box 6, MS 1-107
Boise, Idaho, USA 83707-0006
[***]

(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 check sent to the following person or by such other manner designated by such person:

Payments to Micron:

[***]
8000 S. Federal Way
P.O. Box 6, MS 1-107
Boise, Idaho, USA 83707-0006
[***]

Payments to NTC:

[***]
Nanya Technology Corp.
Hwa-Ya Technology Park 669, Fuhsing 3 Rd. Kueishan, Taoyuan, Taiwan, R. O. C.
[***]

Payment to Joint Venture Company:

[***]
Inotera Memories, Inc.
Hwa-Ya Technology Park
667, Fuhsing 3 Rd., Kueishan, Taoyuan
Taiwan, R.O.C.
[***]

3.4 Interest. Any amounts payable to a Party 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 [***].

3.5 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 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 3.5(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, [***].

3.6 Payment Delay. Notwithstanding anything to the contrary in this Agreement, if requested by Micron by notice in accordance with Section 9.1, Inotera will [***] when due until notified by Micron in accordance with Section 9.1.

ARTICLE 4 **INTELLECTUAL PROPERTY**

4.1 No Transfer of IP Rights. Nothing in this Agreement [***].

4.2 Invention Disclosure Procedures; Inventorship; Authorship.

(a) As soon as reasonably practicable [***], the Joint Venture Company shall, and Micron and NTC shall cause the Joint Venture Company to, introduce procedures to encourage and govern the submission of disclosures of inventions by its Representative(s) to [***]. Such procedures shall include (i) a policy statement encouraging the submission of such invention disclosures, (ii) appropriate invention disclosure forms, (iii) a commitment on the part of the Joint Venture Company to obtain relevant invention disclosure forms from its Representatives and to submit such forms to the [***], (iv) the formation and operation of a Patent Review Committee to evaluate invention disclosures and steer the filing and prosecution of patent applications with respect thereto, and (v) [***].

(b) Inventorship for any inventions conceived by the Joint Venture Company or any of its Representatives, including JDP Inventions, shall be determined in accordance with United States patent laws.

(c) Authorship for all works of authorship and mask works created by or made by or for the Joint Venture Company or any of its Representatives, including JDP Work Product, whether registered or not, shall be determined in accordance with United States copyright laws and laws concerning Mask Work Rights, as applicable.

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4.3 Ownership of Inventions and Work Product.

[***]

4.4 [***]

[***]

ARTICLE 5
CONFIDENTIALITY

5.1 Confidentiality Obligations. All information (including JDP Work Product, JDP Inventions, JDP Process Nodes and JDP Designs) provided, disclosed, created or obtained in connection with this Agreement, the TTA 68-50 or the performance of any of the Parties' activities under this Agreement, the TTA 68-50 or the JDP Agreement, including the performance of activities under a SOW, shall be deemed "Confidential Information" subject to all applicable provisions of the Mutual Confidentiality Agreement. The terms and conditions of this Agreement shall be considered "Confidential Information" under the Mutual Confidentiality Agreement for which each Party shall be considered a "Receiving Party" under such agreement. The Joint Venture Company shall be deemed a "Receiving Party" under such agreement with respect to any inventions and works owned by the Joint Venture Company or assigned by or that should be assigned by the Joint Venture Company to Micron or to Micron and NTC under this Agreement.

ARTICLE 6
WARRANTIES; DISCLAIMERS

6.1 No Implied Obligation. 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 JDP Work Product, JDP Inventions, JDP Process Nodes or JDP Designs or other 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.

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6.2 Third Party Software. Use of any inventions or works exchanged among any of the Parties under this Agreement may require use of Software owned by a Third Party and not subject to any license granted under any of the Joint Venture Documents. 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 the 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. [***]

ARTICLE 7 **LIMITATION OF LIABILITY**

7.1 LIMITATION OF LIABILITY. [***]

ARTICLE 8 **TERM AND TERMINATION**

8.1 Term. The term of this Agreement commences on the Effective Date and continues in effect until terminated in accordance with Section 8.2. (The period from the Effective Date until termination is the “**Term**”).

8.2 Termination of this Agreement.

(a) This Agreement and the TTA 68-50 shall terminate automatically if:

[***]

(b) Either Micron or NTC may terminate this Agreement and/or the TTA 68-50 by notice to the other Parties if either of the other Parties commits a material breach of this Agreement or if Micron or the Joint Venture Company commits a material breach of TTA 68-50, and any such breach remains uncured for more than [***] of the breach from Micron or NTC.

(c) [***].

8.3 Effects of Termination.

(a) Termination of this Agreement shall not affect any of the Parties’ respective rights accrued or obligations owed before termination. In addition, the following shall survive termination of this Agreement for any reason: Articles 1, 3, 5, 6, 7 and 9 and Sections 4.1, 4.2(b) and (c), 4.4 and 8.3. Section 4.3 shall survive solely with respect to inventions and works of authorship made or created by the Joint Venture Company before termination and the right to claim reimbursement.

(b) At such time when this Agreement, the TTA 68-50 and the TTLA have been terminated, the Joint Venture Company shall:

[***]

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: 208.368.4537

If to the Joint Venture Company:

Inotera Memories, Inc.
667, Fuhsing 3rd Road,
Haw-Ya Technology Park Kueishan, Taoyuan 333
Taiwan, ROC
Attention: Legal Department
Fax: +886 3 327 2988 ext 3385

with a copy to each of Micron and NTC as identified above.

9.2 **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.

9.3 **Assignment.** [***]

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 contained herein.

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. Except as provided in Sections 4.2 (b) and (c), 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 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 Effective Date.

NANYA TECHNOLOGY CORPORATION

By: /s/ Jih Lien
Name: Jih Lien
Title: President

[Signature pages follow.]

THIS IS A SIGNATURE PAGE FOR THE TECHNOLOGY TRANSFER AGREEMENT ENTERED INTO BY AND AMONG NTC, MICRON AND THE
JOINT VENTURE COMPANY

MICRON TECHNOLOGY, INC.

By: /s/ D. Mark Durcan
Name: D. Mark Durcan
Title: President and Chief Operating Officer

[Signature page follows.]

THIS IS A SIGNATURE PAGE FOR THE TECHNOLOGY TRANSFER AGREEMENT ENTERED INTO BY AND AMONG NTC, MICRON AND THE
JOINT VENTURE COMPANY

LAI-2988108v4

INOTERA MEMORIES, INC.

By: /s/ Joseph Hsieh
Name: Joseph Hsieh
Title: Supervisor

THIS IS A SIGNATURE PAGE FOR THE TECHNOLOGY TRANSFER AGREEMENT ENTERED INTO BY AND AMONG NTC, MICRON AND THE
JOINT VENTURE COMPANY

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

CONFIDENTIAL

**TECHNOLOGY TRANSFER AGREEMENT
FOR 68-50NM PROCESS NODES**

This **TECHNOLOGY TRANSFER AGREEMENT FOR 68-50NM PROCESS NODES** (this “**Agreement**”), is executed on this 11th day of October, 2008 (“**Execution Date**”), by and between Micron Technology, Inc., a Delaware corporation (“**Micron**”) and Inotera Memories, Inc., a company-limited-by-shares incorporated under the laws of the Republic of China (“**Joint Venture Company**”). (Micron and the Joint Venture Company are referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**”). This Agreement shall take effect as of the date of the 2nd Closing. In the event the 2nd Closing does not occur, this Agreement shall not take effect and neither Party shall have any rights or obligations hereunder.

RECITALS

- A. Micron has developed technology for 68nm and 50nm Process Nodes for the manufacture of Stack DRAM Products.
- B. The Joint Venture Company desires to have such technology transferred to the Joint Venture Company for its use in the manufacture of Stack DRAM Products, and Micron intends to so transfer such technology to the Joint Venture Company.

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.

“**2nd Closing**” shall have the meaning set forth in the Share Purchase Agreement.

“**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.

“**Effective Date**” shall mean, if the 2nd Closing occurs, the date that the 2nd Closing occurs.

“**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).

“**GAAP**” means, with respect to Micron, United States generally accepted accounting principles, and with respect to the Joint Venture Company, 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, or any arbitrator or arbitration panel.

“**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 Company**” shall have the meaning set forth in the preamble to this Agreement.

“**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.

“**Micron**” shall have the meaning set forth in the preamble 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.

“**Process Node**” means [***].

“**Recoverable Taxes**” shall have the meaning set forth in Section 3.5(a).

“**Share Purchase Agreement**” means that certain Share Purchase Agreement by and between Micron and Qimonda AG entered into as of the Execution Date, as the same may be amended from time to time.

“**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 cell that functions 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 2.

“**Stack DRAM Product**” means any memory comprising Stack DRAM, whether in die or wafer form.

“**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 Micron or the Joint Venture Company.

“**Transferred Technology**” means [***].

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, any of the Parties by reason of the extent to which (1) any 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
TRANSFER OF TECHNOLOGY TO JOINT VENTURE COMPANY

2.1 Delivery of Transferred Technology to Joint Venture Company. On a delivery schedule mutually agreed between the Parties, but no earlier than the Effective Date, Micron shall provide to the Joint Venture Company the Transferred [***], which process is outlined on Schedule 3. Except as provided in Section 2.2, the foregoing obligation does not require Micron to create, make, adapt, develop, modify and/or translate any such information or materials. The Joint Venture Company may at any time request Micron in writing to supplement its prior disclosures of such Transferred Technology with any items the Joint Venture Company believes to be missing or incomplete from such disclosures; however, with respect to the subject matter of any such requests made [***], the Joint Venture Company shall be precluded from asserting that Micron is in breach of its obligations under this Section.

2.2 Preproduction Wafers. On a delivery schedule mutually agreed between the Parties, Micron shall, [***], provide to the Joint Venture Company [***]. On a delivery schedule mutually agreed between the Parties, Micron shall, at Micron's cost, provide to the Joint Venture Company [***].

2.3 Engineering Services. As reasonably requested by the Joint Venture Company from time to time and to the extent fulfilling such request would not cause disruption of their respective operations, Micron will provide to the Joint Venture Company engineering support for its implementation of the Transferred Technology transferred by Micron to the Joint Venture Company for use in the Joint Venture Company's facilities for the manufacture of Stack DRAM wafers.

ARTICLE 3
PAYMENTS

3.1 Transfer of Technology to Joint Venture Company. For the transfer of the Transferred Technology from Micron to the Joint Venture Company for the 68nm Process Node and the 50nm Process Node, the Joint Venture Company shall pay to Micron the sum of \$50,000,000.00 (fifty million dollars) within ten (10) days of the Effective Date, unless, prior to such time, MeiYa Technology Corporation ("MeiYa") shall have paid to Micron the technology transfer fees contemplated to be paid by it to Micron with respect to the transfer by Micron to MeiYa of the 68 nm and 50 nm process nodes. The Joint Venture Company shall have no further or other obligation to make additional technology transfer payments with respect to the transfer of such process nodes.

3.2 Engineering Service Fees. Micron shall charge Joint Venture Company for any engineering services provided by Micron to Joint Venture Company under Section 2.3 for all out-of-pocket expenses reasonably incurred in connection therewith. [***]. If any employee(s) of Micron are required to provide such services at a location other than his/her/their normal working location, then [***]. Micron will invoice Joint Venture Company for all such costs and expenses monthly as incurred. Joint Venture Company will pay Micron the amount due within thirty (30) days of receipt of invoice.

3.3 Invoices; Payments.

(a) All invoices under this Agreement may be sent by any method described in Section 8.1 or electronically with hardcopy confirmation sent promptly thereafter by any method described in Section 8.1. Such 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 8.1:

Invoices to Joint Venture Company:

To be provided by notice.

(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 check sent to the following person or by such other manner designated by such person:

Payments to Micron:

[***]
8000 S. Federal Way
P.O. Box 6, MS 1-107
Boise, Idaho, USA 83707-0006
Fax: [***]
Email: [***]

3.4 Interest. Any amounts payable to a Party 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 [***] or the highest rate permitted by Applicable Law, whichever is lower.

3.5 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 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 3.5(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, [***].

3.6 Payment Delay. Notwithstanding anything to the contrary in this Agreement, if requested by Micron by notice in accordance with Section 8.1, Joint Venture Company will [***] until notified by Micron in accordance with Section 8.1.

ARTICLE 4 **INTELLECTUAL PROPERTY**

4.1 [***] IP or Patent Rights. Nothing in this Agreement [***]. The transfers of technology by Micron to the Joint Venture Company hereunder [***]. The Joint Venture Company shall [***].

ARTICLE 5 **WARRANTIES; DISCLAIMERS**

5.1 No Implied Obligation. 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 Transferred Technology or other 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.

5.2 **DISCLAIMER.** THE TRANSFERRED TECHNOLOGY OR OTHER TECHNOLOGY OR MATERIALS TRANSFERRED OR DEVELOPED UNDER THIS AGREEMENT, OR (B) MANUFACTURE OR HAVE MANUFACTURED ANY PRODUCTS BASED THEREON. MICRON MAKES NO WARRANTY, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, THAT THE USE, PRACTICE OR COMMERCIAL EXPLOITATION [***].

ARTICLE 6 **LIMITATION OF LIABILITY**

6.1 **LIMITATION OF LIABILITY.** [***].

ARTICLE 7 **TERM AND TERMINATION**

7.1 **Term.** If the 2nd Closing occurs, the term of this Agreement shall commence on the Effective Date and continue in effect until terminated in accordance with this Agreement or any other agreement to which the Parties are parties. In the event the 2nd Closing does not occur, this Agreement shall not take effect and neither Party shall have any rights or obligations hereunder.

7.2 **Termination of this Agreement.**

(a) This Agreement shall terminate automatically if [***].

(b) Micron may terminate this Agreement by notice to the Joint Venture Company if the Joint Venture Company commits a material breach of this Agreement and such breach remains uncured for [***] of the breach from Micron.

(c) The Joint Venture Company may not terminate this Agreement for any reason, including breach by Micron.

7.3 **Effects of Termination.**

(a) Termination of this Agreement shall not affect any of the Parties' respective rights accrued or obligations owed before termination. In addition, the following shall survive termination of this Agreement for any reason: Articles 1, 3, 4, 5, 6 and 8 and Section 7.3.

(b) Upon termination of this Agreement, the Joint Venture Company shall:

[***]

ARTICLE 8
MISCELLANEOUS

8.1 **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 Joint Venture Company:

Inotera Memories, Inc.
667, Fuhsing 3rd Road,
Haw-Ya Technology Park Kueishan, Taoyuan 333
Taiwan, ROC
Attention: Legal Department
Fax: +886 3 327 2988 ext 3385

If to Micron: Micron
8000 S. Federal Way
Mail Stop 1-507
Boise, ID 83716
Attention: General Counsel
Fax: 208.368.4537

8.2 **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.

8.3 **Assignment.** [***].

8.4 **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.

8.5 **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.

8.6 **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.

8.7 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.

8.8 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.

8.9 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.

8.10 Entire Agreement. This Agreement, together with its Schedules and the agreements and instruments expressly provided for herein, including the applicable terms of any other agreements to which Micron and the Joint Venture Company are a Party, constitute the entire agreement of the Parties hereto with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, between the Parties hereto with respect to the subject matter hereof.

8.11 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.

8.12 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 page follows >

IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

MICRON TECHNOLOGY, INC

By: /s/ D. Mark Durcan
Name: D. Mark Durcan
Title: President and Chief Operating Officer

INOTERA MEMORIES, INC.

By: /s/ Charles Kau
Name: Charles Kau
Title: President

By: /s/ Peter Bailey
Name: Peter Bailey
Title: Executive Vice President

**THIS IS THE SIGNATURE PAGE FOR THE TECHNOLOGY TRANSFER AGREEMENT FOR 68-50NM PROCESS NODES
ENTERED INTO BY AND BETWEEN MICRON TECHNOLOGY AND THE JOINT VENTURE COMPANY**

**RULE 13a-14(a) CERTIFICATION OF
CHIEF EXECUTIVE OFFICER**

I, Steven R. Appleton, 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: January 13, 2009

/s/ Steven R. Appleton

Steven R. Appleton

Chairman and Chief Executive Officer

**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: January 13, 2009

/s/ Ronald C. Foster

Ronald C. Foster

Vice President of Finance and Chief Financial Officer

**CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO 18 U.S.C. 1350**

I, Steven R. Appleton, 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 December 4, 2008, 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: January 13, 2009

/s/ Steven R. Appleton

Steven R. Appleton
Chairman and Chief Executive Officer

**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 December 4, 2008, 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: January 13, 2009

/s/ Ronald C. Foster

Ronald C. Foster
Vice President of Finance and Chief Financial Officer
