

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into this 15th day of December 2009, by and between Toshiba America Electronic Components, Inc. and Toshiba Corporation (“Defendants”) and the plaintiff class representatives (“Plaintiffs”), both individually and on behalf of a class of direct purchasers of DRAM (“Class”) that purchased DRAM in the United States at any time during the period beginning April 1, 1999 and continuing through June 30, 2002 (the “Class Period”), as more particularly defined in Paragraph A.1 below.

WHEREAS, Plaintiffs have been and are prosecuting an action (the “Action”) on their own behalf and on behalf of the Class against various sellers of DRAM, including Defendants;

WHEREAS, Plaintiffs allege that various sellers of DRAM, including Defendants, participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of DRAM at artificially high levels in violation of Section 1 of the Sherman Act;

WHEREAS, Defendants deny Plaintiffs’ allegations and have asserted defenses to Plaintiffs’ claims;

WHEREAS, Plaintiffs have conducted an investigation into the facts and the law regarding the Action and have concluded that resolving claims against Defendants according to the terms set forth below is in the best interest of Plaintiffs and the Class;

WHEREAS, Defendants, despite their belief that they are not liable for the claims asserted and have good defenses thereto, have nevertheless agreed to enter into this Agreement to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the releases, orders, and judgment contemplated by this Agreement, and to put to rest with finality all claims that have been or could have been asserted against Defendants based on the allegations of the Action, as more particularly set out below;

NOW, THEREFORE, in consideration of the covenants, agreements, and releases set forth herein and for other good and valuable consideration, it is agreed by and among the undersigned that the Action be settled, compromised, and dismissed on the merits with prejudice as to the Toshiba Releasees, as defined below, and except as hereinafter provided, without costs as to Plaintiffs, the Class, or Defendants, subject to the approval of the United States District Court for the Northern District of California (“Court”), on the following terms and conditions:

A. Definitions.

1. For purposes of this Agreement, “the Class” is defined as all individuals and entities who, at any time during the period beginning April 1, 1999 and continuing through June 30, 2002 (the “Class Period”), purchased DRAM in the United States directly from the Defendants or their subsidiaries, or any of their alleged co-conspirators, Elpida Memory, Inc., Elpida Memory (USA) Inc., Hynix Semiconductor, Inc., Hynix Semiconductor America, Inc., Infineon Technologies AG, Mosel-Vitec, Inc., Mosel Vitec Corp., NEC Electronics America,

Inc., Nanya Technology Corporation USA, Samsung Electronics Company, Ltd., Infineon Technologies North America Corp., Micron Technology, Inc., Micron Semiconductor Products, Inc. through its Crucial Technology division, Samsung Semiconductor, Inc., Winbond Electronics Corporation, Winbond Electronics Corporation America, Mitsubishi Electric Corporation, Mitsubishi Electric and Electronics U.S.A., Inc., Hitachi, Ltd., or their subsidiaries, and who did not by October 3, 2006, request exclusion from the class certified in the Court's June 5, 2006 Order, settle or release their claims, and/or whose claims are not otherwise precluded. Excluded from the Class are Defendants and their parents, subsidiaries, affiliates, all governmental entities, and alleged co-conspirators. The definitions of Class and Class Period herein do not limit the scope of the Release provided in Paragraphs 13-15 of this Agreement.

2. For purposes of this Agreement, DRAM is defined to mean dynamic random access memory components, including without limitation, synchronous dynamic random access memory ("SDRAM"), Rambus dynamic random access memory ("RDRAM"), asynchronous dynamic random access memory ("ASYNC"), FPM DRAM, EDO DRAM, BEDO RAM, and double data rate ("DDR") synchronous dynamic random access memory semiconductor devices and modules.

3. "Toshiba Releasees" shall refer to Defendants and to all of their respective past and present, direct and indirect, parents, subsidiaries, affiliates; the predecessors, successors and assigns of any of the above; and each and all of the present and former principals, partners, officers, directors, supervisors, employees, representatives, insurers, attorneys, heirs, executors, administrators, and assigns of each of the foregoing.

4. "Class Member" means each member of the Class as defined in paragraph A.1.

5. "Releasers" shall refer to the plaintiff class representatives and the Class Members, and to their past and present officers, directors, employees, agents, stockholders, attorneys, servants, representatives, parents, subsidiaries, affiliates, partners, insurers and all other persons, partnerships or corporations with whom any of the former have been, or are now, affiliated, and the predecessors, successors, heirs, executives, administrators and assigns of any of the foregoing.

6. "The Settlement Fund" shall be \$9,250,000, plus a maximum of \$400,000 to be used for notice and administration costs, in United States funds, plus accrued interest on such deposits set forth in Paragraph 18.

7. "Co-Lead Counsel" shall refer to the law firms of:

Guido Saveri
Saveri & Saveri, Inc.
706 Sansome Street
San Francisco, CA 94111

Anthony D. Shapiro
Hagens Berman Sobol Shapiro
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101

Fred Taylor Isquith
Wolf Haldenstein Adler Freeman & Herz LLP
270 Madison Avenue
New York, NY 10016

B. Approval of this Agreement and Dismissal of Claims Against Defendants.

8. Plaintiffs and Defendants shall use their best efforts to effectuate this Agreement, including cooperating in promptly seeking the Court's approval for the establishment of procedures (including the giving of class notice under Federal Rules of Civil Procedure 23(c) and (e)) to secure the prompt, complete, and final dismissal with prejudice of the Action as to Defendants.

9. As soon as practicable after the date of this Agreement, Plaintiffs shall submit to the Court, a motion for preliminary approval of the settlement and final judgment contemplated by this Agreement and a motion for authorization to disseminate notice of the settlement and final judgment contemplated by this Agreement to all putative Class Members (the "Notice Motion"). The Notice Motion shall include (i) a proposed form of, method for, and date of dissemination of notice; and (ii) a proposed form of order and final judgment. The text of the foregoing items (i) and (ii) shall be agreed upon by Plaintiffs and Defendants before submission of the Notice Motion, with the understanding that, among other things, individual notice of the settlement shall be mailed by regular mail or email, with appropriate notice by publication, with all expenses paid from the Settlement Fund, to persons and entities that are identified by Defendants in the Action as direct purchasers of DRAM that purchased DRAM during the Class Period. Defendants have supplied to Co-Lead Counsel, at Defendants' expense and in such form as may be reasonably requested by Co-Lead Counsel, such names and addresses of putative Class Members as it has. The Notice Motion shall recite and ask the Court to find that the mailing of the notice of settlement to all of the Class Members who can be identified upon reasonable effort constitutes valid, due and sufficient notice to the Class, constitutes the best notice practicable under the circumstances, and complies fully with the requirements of Federal Rule of Civil Procedure 23.

10. Plaintiffs and Defendants shall jointly seek entry of an order and final judgment, the text of which Plaintiffs and Defendants shall agree upon. That order and final judgment will, at a minimum, include terms providing the substance of the following provisions that:

- a. as to the Action, approving finally this settlement and its terms as being a fair, reasonable and adequate settlement as to the Class Members within the meaning of Federal Rules of Civil Procedure 23 and directing its consummation according to its terms;

- b. as to Defendants, directing that the Action be dismissed with prejudice and, except as provided for in this Agreement, without costs and fees;
- c. reserving exclusive jurisdiction over the settlement and this Agreement, including the administration and consummation of this settlement to the Court;
- d. determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to Defendants shall be final.

11. This Agreement shall become final when (i) the Court has entered a final order approving this Agreement under Federal Rule of Civil Procedure 23(e) and a final judgment dismissing the Action with prejudice as to Defendants against all Class Members and without costs and fees other than those provided for in this Agreement, and (ii) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and entry of a final judgment as to Defendants has expired or, if appealed, approval of this Agreement and the final judgment as to Defendants have been affirmed in their entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review. It is agreed that neither the provisions of Federal Rules of Civil Procedure 60 nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the above-stated times. On the date that Plaintiffs and Defendants have executed this Agreement, Plaintiffs and Defendants shall be bound by its terms and this Agreement shall not be rescinded except in accordance with Paragraph 24 of this Agreement.

12. Neither this Agreement (whether or not it should become final) nor the final judgment, nor any and all negotiations, documents and discussions associated with them, shall be deemed or construed to be an admission by Defendants (or the Toshiba Releasees) or evidence of any violation of any statute or law or of any liability or wrongdoing whatsoever by Defendants (or the Toshiba Releasees), or of the truth of any of the claims or allegations contained in any complaint or any other pleading filed by Plaintiffs in the Action, and evidence of the Agreement, final judgment, and negotiations, documents and discussions associated therewith shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding. Neither this Agreement, nor any of its terms and provisions, nor any of the negotiations or proceedings connected with it, nor any other action taken to carry out this Agreement by any of the settling parties shall be referred to, offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceedings, except in a proceeding to enforce this Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law.

C. Release, Discharge, and Covenant Not to Sue.

13. In addition to the effect of any final judgment of the Court entered in accordance with this Agreement, upon this Agreement becoming final as set out in Paragraph 11 of this Agreement, and in consideration of payment of the Settlement Fund, as specified in Paragraph 16 of this Agreement, and for other valuable consideration, the Toshiba Releasees shall be completely released, acquitted, and forever discharged from any and all claims, demands,

actions, suits, causes of action, whether class, individual, or otherwise in nature (whether or not any Class Member has objected to the settlement or makes a claim upon or participates in the Settlement Fund, whether directly, representatively, derivatively or in any other capacity) that Releasors, or each of them, ever had, now has, or hereafter can, shall, or may have on account of, or in any way arising out of, any and all known and unknown, foreseen and unforeseen, suspected or unsuspected injuries, damages, and the consequences thereof in any way arising out of or relating in any way to any act or omission of the Toshiba Releasees (or any of them) concerning the manufacture, supply, distribution, discounting, marketing, sale or pricing of DRAM up to the date of execution of this Agreement, including but not limited to any conduct alleged, and causes of action asserted or that could have been alleged or asserted, in class action complaints filed in the Action, including those arising under any U.S. or foreign, federal or state antitrust, unfair competition, unfair practices, price discrimination, unitary pricing, or trade practice law, including without limitation, the Sherman Antitrust Act, 15 U.S.C. § 1 *et seq.* (the "Released Claims"). Releasors shall not, after the date of this Agreement, seek to establish liability against any Toshiba Releasee based, in whole or in part, upon any of the Released Claims or conduct at issue in the Released Claims.

14. In addition to the provisions of Paragraph 13 of this Agreement, Releasors hereby expressly waive and release, upon this Agreement becoming final, any and all provisions, rights, and benefits conferred by §1542 of the California Civil Code, which states:

CERTAIN CLAIMS NOT AFFECTED BY GENERAL RELEASE. A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR;

or by any law of any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Each Releasor may hereafter discover facts other than or different from those which he, she, or it knows or believes to be true with respect to the claims which are the subject matter of the provisions of Paragraph 13 of this Agreement, but each Releasor hereby expressly waives and fully, finally, and forever settles and releases, upon this Agreement becoming final, any known or unknown, suspected or unsuspected, asserted or unasserted, contingent or non-contingent claim with respect to the subject matter of the provisions of Paragraph 13 of this Agreement, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

15. The release, discharge, and covenant not to sue set forth in Paragraph 13 of this Agreement does not include claims by any of the Class Members other than the Released Claims and does not include other claims, such as those solely arising out of product liability or breach of contract claims in the ordinary course of business not covered by the Released Claims. Further, the release, discharge and covenant not to sue set forth in Paragraph 13 of this Agreement includes only direct purchaser claims.

D. Settlement Amount.

16. Subject to the provisions hereof, and in full, complete and final settlement of the Action as provided herein, Defendants shall wire \$9,650,000 in United States Dollars (which includes \$400,000 paid pursuant to Paragraph 6 for notice and administration costs) into an escrow account to be administered in accordance with the provisions of Paragraph 18 of this Agreement (the "Escrow Account"). The \$9,650,000 shall be wired within thirty (30) business days from the date on which the motion for preliminary approval of settlement pursuant to the Federal Rules of Civil Procedure and the terms of this Agreement are filed with the Clerk of the Court.

17. If notice and administration costs are less than \$400,000, the difference between such notice and administration costs and \$400,000 shall be returned to the Defendants no later than thirty (30) days after costs of notice and administration have been paid. Further, if Plaintiffs reach settlement with one or more potential defendants in addition to Defendants, the costs of notice and administration will be shared equally by Defendants and the other settling defendants and any resulting reduction in notice and administration costs paid by Defendants pursuant to Paragraph 6 shall be returned to the Defendants no later than thirty (30) days after costs of notice and administration have been paid.

18. Escrow Account.

- a. The Escrow Account will be established at Union Bank of California, 350 California Street, San Francisco, California, with such Bank serving as escrow agent ("Escrow Agent") subject to escrow instructions mutually acceptable to Plaintiffs Co-Lead Counsel and Defendants, such escrow to be administered under the Court's continuing supervision and control. Notwithstanding any other provisions of this Agreement, no payment by Defendants will be due any earlier than 15 business days following receipt by Defendants of final agreed upon escrow instructions, including an escrow account number.
- b. The Escrow Agent shall cause the funds deposited in the Escrow Account to be invested in instruments backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, or money market funds invested substantially in such instruments, and shall reinvest any income from these instruments and the proceeds of these instruments as they mature in similar instruments at their then current market rates.
- c. All funds held in the Escrow Account shall be deemed and considered to be in custodia legis of the Court, and shall remain subject to the jurisdiction of the Court, until such time as such funds shall be distributed pursuant to this Agreement and/or further order(s) of the Court.
- d. Plaintiffs and Defendants agree to treat the Settlement Fund as being at all times a "qualified settlement fund" within the meaning of Treas. Reg. §