

**CANADIAN DRAM CLASS ACTION
NATIONAL SETTLEMENT AGREEMENT**

Made as of June 18, 2014

Between

**PRO-SYS CONSULTANTS LTD., KHALID EIDOO,
CYGNUS ELECTRONICS CORPORATION and
OPTION CONSOMMATEURS**

(the "Plaintiffs")

and

**INFINEON TECHNOLOGIES AG and
INFINEON TECHNOLOGIES NORTH AMERICA CORP.**

(the "Settling Defendants")

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**CANADIAN DRAM CLASS ACTION
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RECITALS

A. WHEREAS Proceedings have been commenced by the Plaintiffs in British Columbia, Quebec and Ontario which allege that the Settling Defendants participated in an unlawful conspiracy to raise, fix, maintain or stabilize the price of DRAM Products in Canada and/or to allocate markets and customers for the sale of DRAM in Canada, contrary to Part VI of the *Competition Act* and the common law and/or the civil law;

B. WHEREAS the BC Action was certified as a class proceeding under the BC *Class Proceedings Act* pursuant to the BC Certification Order, and whereas the Settling Defendants have defended the BC Action;

C. WHEREAS the Quebec Action was authorized as a class proceeding under the *Quebec Code of Civil Procedure* pursuant to the Quebec Authorization Order;

D. WHEREAS the Ontario Actions have not yet proceeded to a contested certification motion, and whereas the Settling Defendants have not appeared in respect of the Ontario Actions;

E. WHEREAS the Ontario Actions were certified for settlement purposes only as against the Settled Defendants;

F. WHEREAS the deadline for Settlement Class Members to opt out of the Proceedings has passed;

G. WHEREAS there were two opt outs from the Proceedings, neither of which was in the Settlement Class in the Quebec Action;

H. WHEREAS the Settling Defendants deny any allegation of unlawful or otherwise actionable conduct alleged in the Proceedings or otherwise, and have good and valid defences to the allegations made;

I. WHEREAS the Plaintiffs, Class Counsel and the Settling Defendants agree that neither this Settlement Agreement nor any statement made in the negotiation thereof shall be deemed or construed to be an admission by or evidence against the Settling Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Settling Defendants, which allegations are expressly denied by the Settling Defendants;

J. WHEREAS the Settling Defendants are entering into this Settlement Agreement in order to achieve a final and nation-wide resolution of all claims asserted or which could have been asserted against them by the Plaintiffs in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

K. WHEREAS the Settling Defendants do not hereby attorn to the jurisdiction of the Courts or any other court or tribunal in respect of any civil, criminal or administrative process except to the extent they have previously done so in the Proceedings and as is expressly provided in this Settlement Agreement with respect to the Proceedings;

L. WHEREAS Counsel for the Settling Defendants and counsel for the Plaintiffs have engaged in extensive arm's-length settlement discussions and negotiations, resulting in this Settlement Agreement relating to Canada;

M. WHEREAS as a result of these settlement discussions and negotiations, the Settling Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Settling Defendants and the Plaintiffs, both individually and on behalf of the classes they represent and seek to represent, subject to approval of the Courts;

N. WHEREAS the Plaintiffs and Class Counsel have reviewed and fully understand the terms of this Settlement Agreement and, based on their analyses of the facts and law applicable to the Plaintiffs' claims, having regard to the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, and having regard to the value of the Settlement Agreement, the Plaintiffs and Class Counsel have concluded that this

Settlement Agreement is fair, reasonable and in the best interests of the Plaintiffs and the classes they represent and seek to represent;

O. WHEREAS the Parties therefore wish to and hereby finally resolve on a nation-wide basis, without admission of liability, all of the Proceedings as against the Settling Defendants;

P. WHEREAS while the BC Action was previously certified as a class proceeding under the BC *Class Proceedings Act* on a contested basis and while the Quebec Action was authorized as a class proceeding under the *Quebec Code of Civil Procedure*, the Parties now consent to certification or authorization of the Proceedings as class proceedings against the Settling Defendants and now consent to the Settlement Classes and a Common Issue in respect of each of the Proceedings solely for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada and contingent on approvals by the Courts as provided for in this Settlement Agreement, on the express understanding that such certification or authorization shall not derogate from the rights of the BC Plaintiffs as against the Non-Settling Defendants under the BC Certification Order or from the rights of the Quebec Plaintiffs as against the Non-Settling Defendants under the Quebec Authorization Order or from the respective rights of the Parties in the event that this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason; and

Q. WHEREAS the Plaintiffs assert that they are adequate class representatives for the Settlement Classes and will seek to be appointed representative plaintiffs in their respective Proceedings;

NOW THEREFORE, in consideration of the covenants, agreements and releases set forth and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, it is agreed by the Parties that the Proceedings be settled and dismissed with prejudice as to the Settling Defendants only, without costs as to the Plaintiffs, the classes they represent and seek to represent or the Settling Defendants, subject to the approval of the Courts, on the following terms and conditions:

Section 1 - Definitions

For the purposes of this Settlement Agreement only, including the Recitals and Schedules hereto:

- (1) **Administration Expenses** means all fees, disbursements, expenses, costs, taxes and any other amounts incurred or payable by the Plaintiffs, Class Counsel or otherwise for the approval, implementation and operation of this Settlement Agreement, including the costs of notices and claims administration but excluding Class Counsel Fees.
- (2) **BC Action** means the BC Action as defined in Schedule "A".
- (3) **BC Class Proceedings Act** means the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
- (4) **BC Certification Order** means the order issued by the British Columbia Court of Appeal and entered on April 12, 2010 in respect of the certification of the BC Action under the *BC Class Proceedings Act*.
- (5) **BC Confidentiality Order** means the order made after application in respect of the confidentiality of documents, issued by the Supreme Court of British Columbia and entered on February 14, 2012 in the BC Action.
- (6) **BC Counsel** means Camp Fiorante Matthews Mogeran.
- (7) **BC Court** means the Supreme Court of British Columbia.
- (8) **Claims Administrator** means the firm proposed by Class Counsel and appointed by the Courts to administer the Settlement Amount in accordance with the provisions of this Settlement Agreement as approved by the Courts, and any employees of such firm.
- (9) **Class Counsel** means Ontario Counsel, Quebec Counsel and BC Counsel.
- (10) **Class Counsel Fees** include the fees, disbursements, costs, interest, and/or charges of Class Counsel, and any GST, HST and other applicable taxes or charges thereon, including any

amounts payable by Class Counsel or the Settlement Class Members to any other body or person, including the Fonds d'aide aux recours collectifs in Quebec.

(11) **Class Period** means April 1, 1999 to June 30, 2002.

(12) **Common Issue** in each Proceeding means: Did the Settling Defendant(s), or any of them, conspire to harm the Settlement Class Members during the Class Period?

(13) **Counsel for the Settling Defendants** means Stikeman Elliott LLP.

(14) **Courts** means the Ontario Court, the Quebec Court and the BC Court.

(15) **Date of Execution** means the date on the cover page as of which the Parties have executed this Settlement Agreement.

(16) **Defendants** means the entities named as defendants in any of the Proceedings as set out in Schedule "A", and any persons added as defendants in the Proceedings in the future. For greater certainty, Defendants includes the Settling Defendants and the Settled Defendants.

(17) **Distribution Protocol** means the plan for distributing the Settlement Amount and accrued interest, in whole or in part, as established by Class Counsel and approved by the Courts.

(18) **DRAM** means dynamic random access memory devices and components, including without limitation, all types of EDO DRAM, fast-page mode (FPM) DRAM, synchronous dynamic random access memory ("SDRAM"), synchronous graphics dynamic random access memory ("SGRAM"), Rambus dynamic random access memory ("RDRAM"), asynchronous dynamic random access memory ("ASYNC"), double data rate dynamic random access memory ("DDR"), including modules containing SGRAM, DRAM, EDO DRAM, FPM DRAM, RDRAM, SDRAM, ASYNC and/or DDR. For greater certainty, DRAM does not include SRAM.

(19) **DRAM Products** means DRAM and products that contain DRAM.

(20) **Effective Date** means the date when Final Orders have been received from all Courts approving this Settlement Agreement **and** the Settlement Amount has been fully paid to BC Counsel as provided for in Section 3.1 of this Settlement Agreement.

(21) **Excluded Person** means each Defendant, the directors and officers of each Defendant, the subsidiaries or affiliates of each Defendant, the entities in which each Defendant or any of that Defendant's subsidiaries or affiliates have a controlling interest and the legal representatives, heirs, successors and assigns of each of the foregoing and those persons who validly opted out of the Proceedings in accordance with the order of the BC Court dated February 24, 2012, the judgment of the Quebec Court dated March 27, 2012, or the order of the Ontario Court dated March 27, 2012, as appropriate.

(22) **Final Order** means the later of a final judgment entered by a Court in respect of (i) the certification or authorization of a Proceeding as a class proceeding pursuant to this Settlement Agreement, and (ii) the approval of this Settlement Agreement, in either case once the time to appeal such judgment has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the certification or authorization of a Proceeding as a class proceeding and the approval of this Settlement Agreement upon a final disposition of all appeals.

(23) **First Publication of Notice Date** means the first date on which the notice referred to in Section 11.1 will be published.

(24) **Infineon** means Infineon Technologies AG and Infineon Technologies North America Corp.

(25) **Non-Settling Defendant** means any Defendant that is not a Settling Defendant or a Settled Defendant, and includes any Defendant that terminates its own settlement agreement in accordance with its terms or whose settlement otherwise fails to take effect for any reason, whether or not such settlement agreement is in existence at the Date of Execution.

(26) **Ontario Action** means the Ontario Action as defined in Schedule "A".

- (27) **Ontario Actions** means the Ontario Action and the Ontario Additional Action.
- (28) **Ontario Additional Action** means the Ontario Additional Action as defined in Schedule "A", unless it is consolidated into the Ontario Action.
- (29) **Ontario Class Proceedings Act** means the *Class Proceedings Act, 1992*, S.O. 1992, c. 6, as amended, S.O. 2006, c. 19.
- (30) **Ontario Counsel** means Sutts, Strosberg LLP and Harrison Pensa LLP.
- (31) **Ontario Court** means the Ontario Superior Court of Justice.
- (32) **Other Actions** means actions or proceedings, excluding the Proceedings, relating to Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (33) **Parties** means the Settling Defendants, the Plaintiffs, and, where necessary, the Settlement Class Members.
- (34) **Plaintiffs** means the individuals and entities named as plaintiffs in the Proceedings as set out in Schedule "A".
- (35) **Proceedings** means the BC Action, the Quebec Action, the Ontario Action and the Ontario Additional Action as defined in Schedule "A".
- (36) **Produced Documents** means the documents produced by the Settling Defendants to BC Counsel and the BC Plaintiff in the BC Action, except for any such documents over which the Settling Defendants assert a privilege and were inadvertently disclosed.
- (37) **Proportionate Liability** means the proportion of any judgment that, had they not settled, a Court would have apportioned to the Settling Defendants.

(38) **Purchase Price** means the sale price paid by Settlement Class Members for DRAM Products purchased during the Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.

(39) **Quebec Action** means the Quebec Action as defined in Schedule "A".

(40) **Quebec Authorization Order** means the judgment of the Quebec Court of Appeal dated November 16, 2011 granting Option Consommateurs' motion seeking authorization to institute a class action.

(41) **Quebec Code of Civil Procedure** means the *Code of Civil Procedure of Quebec*, R.S.Q., c. C-25.

(42) **Quebec Counsel** means Belleau Lapointe, LLP.

(43) **Quebec Court** means the Superior Court of Quebec.

(44) **Released Claims** means any and all manner of claims, demands, actions, suits, causes of action, whether class, individual or otherwise in nature, whether personal or subrogated, damages whenever incurred, liabilities of any nature whatsoever, including interest, costs, expenses, class administration expenses (including Administration Expenses), penalties, and lawyers' fees (including Class Counsel Fees), known or unknown, suspected or unsuspected, in law, under statute or in equity, relating in any way to any conduct anywhere, from the beginning of time to the date of the last Final Order, in respect of the purchase, sale, pricing, discounting, marketing or distributing of DRAM Products, relating to any conduct alleged (or which was previously or could have been alleged) in the Proceedings including, without limitation, any such claims which have been asserted or could have been asserted, whether in Canada or elsewhere. However, nothing herein shall be construed to release any claims that relate to product liability or warranty issues.

(45) **Releasees** means, jointly and severally, individually and collectively, the Settling Defendants and all of their present, future and former, direct and indirect, parents, subsidiaries, divisions, affiliates, partners, insurers, and all other persons, partnerships or

corporations with whom any of the former have been, or are now, affiliated, and all of their respective past, present and future officers, directors, employees, agents, shareholders, attorneys, trustees, servants and representatives, and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants.

(46) **Releasors** means, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members and their respective parents, subsidiaries, affiliates, predecessors, successors, heirs, executors, administrators, insurers and assigns.

(47) **Settled Defendants** means Elpida Memory Inc. Elpida Memory (USA) Inc., Micron Technology, Inc., Micron Semiconductor Products, Inc., NEC Corporation, NEC Corporation of America, NEC Canada Inc., Renesas Electronics Corporation, Renesas Electronics America Inc., Hitachi, Ltd., Hitachi America, Ltd., Hitachi Electronic Devices (USA), Inc., Hitachi Power Systems Canada Ltd. (previously Hitachi Canada Ltd.), Renesas Electronics Canada Ltd., Nanya Technology Corporation, Nanya Technology Corporation USA, Hynix Semiconductor Inc., Hynix Semiconductor America Inc., Hynix Semiconductor Manufacturing America, Inc., Samsung Electronics Co., Ltd., Samsung Semiconductor, Inc., Samsung Electronics America, Inc., and Samsung Electronics Canada Inc.

(48) **Settlement Agreement** means this agreement, including the recitals and schedules.

(49) **Settlement Amount** means CDN\$9,000,000.

(50) **Settlement Class** means, in respect of each Proceeding, the settlement class defined in Schedule "A".

(51) **Settlement Class Member** means a member of a Settlement Class who has not validly opted out of the Settlement Class in accordance with the order of the BC Court dated February 24, 2012, the judgment of the Quebec Court dated March 27, 2012, or the order of the Ontario Court dated March 27, 2012, as appropriate.

(52) **Settling Defendants** means Infineon Technologies AG and Infineon Technologies North America Corp.

(53) **Trust Account** means an interest-bearing trust account at a Canadian Schedule 1 bank under the control of BC Counsel for the benefit of the Settlement Class Members.

(54) **U.S. Litigation** means the class action proceeding pending in the United States District Court for the Northern District of California, under the caption *In re Dynamic Random Access Memory (DRAM) Antitrust Litigation*, Master File No.: M-02-1486 PJH (JCS), MDL 1486, and includes all actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, and all actions that may be transferred in the future involving similar allegations relating to DRAM Products that are pending or that may be commenced before the federal or state courts of the United States.

Section 2 - Settlement Approval

2.1 Best Efforts

(1) The Parties shall use their best efforts to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the BC Action and Ontario Actions as against the Settling Defendants, and a prompt, complete and final declaration of settlement out of court of the Quebec Action.

2.2 Motions Approving Notice and Seeking Certification or Authorization

(1) The Plaintiffs shall bring motions before the Courts, as soon as practicable after the Settlement Agreement is executed, for orders approving the notices described in Sections 11.1 and certifying or authorizing each of the relevant Proceedings commenced in their respective jurisdictions as a class proceeding as against the Settling Defendants for settlement purposes.

(2) The BC, Ontario and Quebec orders approving the notices described in Sections 11.1 and certifying the BC Action and the Ontario Actions, and authorizing the Quebec Action, respectively, shall be substantially in the forms attached hereto as Schedule "B".

2.3 Motions Seeking Approval of the Settlement

(1) The Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement, as soon as practicable after:

- (a) the orders referred to in Section 2.2(2) have been granted,
- (b) the notices described in Section 11.1 have been published; and
- (c) the deadline for objecting to the Settlement Agreement has expired.

(2) The BC, Ontario and Quebec orders approving this Settlement Agreement shall be substantially in the forms attached hereto as Schedule "C".

(3) This Settlement Agreement shall only become final on the Effective Date.

2.4 Pre-Motion Confidentiality

(1) Until the first of the motions required by Section 2.2 is brought, the Parties shall keep all of the terms of the Settlement Agreement confidential and shall not disclose them without the prior written consent of Counsel for the Settling Defendants and Class Counsel except as required for the purposes of financial reporting or the preparation of financial records (including tax returns and financial statements) or as otherwise required by law.

Section 3 - Settlement Benefits

3.1 Payment of Settlement Amount

(1) The Settling Defendants shall pay the Settlement Amount to BC Counsel to be held in the Trust Account in accordance with the terms of this Settlement Agreement unless otherwise ordered by the Courts as follows:

- (a) the Settling Defendants shall pay CDN\$4,500,000 within 30 days of the Date of Execution; and
- (b) the Settling Defendants shall pay an additional CDN\$4,500,000 on or before January 15, 2015.

- (2) The Settlement Amount shall be paid in full satisfaction of the Released Claims against the Releasees.
- (3) The Settlement Amount shall be all-inclusive.
- (4) The Settling Defendants shall have no obligation to pay any amount in addition to the Settlement Amount, for any reason, pursuant to or in furtherance of this Settlement Agreement or the Proceedings.
- (5) The cost of disseminating the notices, and of preparing the translations, contemplated in Sections 11.1(1) and 14.12(1) respectively of this Settlement Agreement, shall be paid out of the Settlement Amount.
- (6) BC Counsel shall maintain the Trust Account as provided for in this Settlement Agreement.
- (7) BC Counsel shall not pay out all or any part of the monies in the Trust Account, except in accordance with this Settlement Agreement, or in accordance with an order of the Courts obtained after notice to the Parties.

3.2 Taxes and Interest

- (1) Except as hereinafter provided, all interest earned on the Settlement Amount shall accrue to the benefit of the Settlement Classes and shall become and remain part of the Trust Account.
- (2) All taxes payable on any interest which accrues on the Settlement Amount in the Trust Account or otherwise in relation to the Settlement Amount shall be paid from the Trust Account.
- (3) BC Counsel or the Claims Administrator, as appropriate, shall be solely responsible to fulfill all tax reporting and payment requirements arising from the Settlement Amount in the Trust Account, including any obligation to report taxable income and make tax payments. All

taxes (including interest and penalties) due with respect to the income earned by the Settlement Amount shall be paid from the Trust Account.

(4) The Settling Defendants shall have no responsibility to make any filings relating to the Trust Account and will have no responsibility to pay tax on any income earned by the Settlement Amount or pay any taxes on the monies in the Trust Account.

(5) Notwithstanding Sections 3.2(1), (3) and (4), if this Settlement Agreement is terminated, the interest earned on the Settlement Amount shall be paid to the Settling Defendants who, in such case, shall be responsible for the payment of all taxes on such interest.

Section 4 - Cooperation

4.1 Extent of Cooperation

(1) The Settling Defendants shall not oppose any application by the Plaintiffs on notice to the Settling Defendants to use the Produced Documents in the Ontario Actions or the Quebec Action, provided that Quebec and Ontario Class Counsel and the Quebec and Ontario Plaintiffs shall be bound by confidentiality provisions substantially similar to those in the BC Confidentiality Order.

(2) Nothing in this Settlement Agreement shall require or be construed to require the Settling Defendants or any of their present, former or future officers, directors or employees to perform any act, including the transmittal or disclosure of any information, which would violate any federal, provincial, state or local privacy law, any law of a foreign jurisdiction, or any court order.

(3) The Plaintiffs, Class Counsel and Settlement Class Members agree that they shall not pursue any means of discovery against, or seek to compel the evidence of, the Settling Defendants or their current or former officers, directors, employees, agents, or counsel, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

4.2 Limits on Use of Documents

(1) It is understood and agreed that the Produced Documents shall be used only in connection with the prosecution of the claims in the Proceedings, and subject to the provisions of this Settlement Agreement, and shall not be used directly or indirectly for any other purpose. Plaintiffs and Class Counsel agree they will not disclose the documents and information provided by the Settling Defendants beyond what is reasonably necessary for the prosecution of the Proceedings or as otherwise required by law. Class Counsel shall take reasonable precautions to ensure and maintain the confidentiality of such documents and information, and of any work product of Class Counsel that discloses such documents and information.

Section 5 - Distribution of the Settlement Amount and Accrued Interest

5.1 Distribution Protocol

(1) At a time wholly within the discretion of Class Counsel, on notice to the Settling Defendants, Class Counsel shall bring motions before the Courts for orders approving the Distribution Protocol.

(2) The Distribution Protocol shall require Settlement Class Members seeking compensation to give credit for any compensation received through other proceedings or in private out-of-class settlements, unless by such proceedings or private out-of-class settlements the Settlement Class Member's claim was released in its entirety, in which case the Settlement Class Member shall be deemed ineligible for any further compensation.

5.2 No Responsibility for Administration or Fees

(1) The Settling Defendants shall not have any responsibility, financial obligations or liability whatsoever with respect to the investment, distribution or administration of monies in the Trust Account including, but not limited to, Administration Expenses and Class Counsel Fees.

Section 6 - Termination of Settlement Agreement

6.1 Right of Termination

(1) In the event that:

- (a) any Court declines to approve this Settlement Agreement or any material part hereof, including the schedules hereto; or
- (b) the Settlement Amount is not paid to BC Counsel in accordance with Section 3.1(1);

each of the Settling Defendants, Class Counsel, and the Plaintiffs shall have the right to terminate this Settlement Agreement and, except as provided for in Section 6.4, if the Settling Defendants, Class Counsel or the Plaintiffs exercise their right to terminate, the Settlement Agreement shall be null and void and have no further force or effect, shall not be binding on the Parties, and shall not be used as evidence or otherwise in any litigation.

(2) Any order, ruling or determination made (or rejected) by any Court with respect to:

- (a) Class Counsel Fees; or
- (b) the Distribution Protocol;

shall not be deemed to be a material modification of all, or a part, of this Settlement Agreement and shall not provide any basis for the termination of this Settlement Agreement.

6.2 If Settlement Agreement is Terminated

(1) If this Settlement Agreement is terminated:

- (a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement, to amend a certification or authorization order in the Proceedings or to approve this Settlement Agreement, which has not been heard, shall proceed;
- (b) the parties will cooperate in seeking to have any prior order certifying or authorizing a Proceeding as a class proceeding on the basis of the Settlement Agreement, amending a certification or authorization order in the Proceeding, or approving this Settlement Agreement set aside and declared null and void and of

no force or effect, and the parties shall be estopped as against each other from relying on any such order;

- (c) any prior certification or authorization of a Proceeding as a class proceeding on the basis of this Settlement Agreement, including the definitions of the Settlement Class and the Common Issue pursuant to this Settlement Agreement, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings or any other litigation; and
- (d) within ten (10) days of such termination having occurred, Class Counsel shall destroy all documents or other materials provided by the Settling Defendants under this Settlement Agreement or containing or reflecting information derived from such documents or other materials received from the Settling Defendants and, to the extent Class Counsel has disclosed any documents or information provided by the Settling Defendants to any other person, shall recover and destroy such documents or information.

6.3 Allocation of Monies in the Trust Account Following Termination

(1) If the Settlement Agreement is terminated, BC Counsel shall return to the Settling Defendants all monies in the Trust Account including interest but less the costs of notice expended in accordance with Sections 11.1, 11.2 and 13.1 and less the cost of translations required under Section 14.12.

6.4 Survival of Provisions after Termination

If this Settlement Agreement is terminated or otherwise fails to take effect for any reason, the provisions of Sections 3.1(6), 3.1(7), 3.2(1), 3.2(3), 3.2(5), 6.2, 6.3, 6.4, 9.1, 9.2, 12.2(4), 14.6 and 14.18, and the definitions and Schedules applicable thereto shall survive the termination and continue in full force and effect. The definitions and Schedules shall survive only for the limited purpose of the interpretation of Sections 3.1(6), 3.1(7), 3.2(1), 3.2(3), 3.2(5), 6.2, 6.3, 6.4, 9.1, 9.2, 12.2(4) , 14.6 and 14.18, within the meaning of this Settlement Agreement, but for no

other purposes. All other provisions of this Settlement Agreement and all other obligations pursuant to this Settlement Agreement shall cease immediately.

Section 7 - Releases and Dismissals

7.1 Release of Releasees

(1) Upon the Effective Date, and in consideration of payment of the Settlement Amount, and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have.

7.2 Release by Releasees

(1) Upon the Effective Date, each Releasee forever and absolutely releases each of the other Releasees from any and all claims for contribution or indemnity with respect to the Released Claims.

7.3 Covenant Not To Sue

(1) Notwithstanding Section 7.1, for any Settlement Class Members resident in any province or territory where the release of one tortfeasor is a release of all other tortfeasors, the Releasors do not release the Releasees but instead covenant and undertake not to make any claim in any way or to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

7.4 No Further Claims

(1) Upon the Effective Date, the Releasors shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or unnamed co-

conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling defendant or unnamed co-conspirator that is not a Releasee.

7.5 Dismissal of the Proceedings

(1) Upon the Effective Date, the BC Action and the Ontario Actions shall be dismissed with prejudice and without costs as against the Settling Defendants.

(2) Upon the Effective Date, the Quebec Action shall be settled, without costs and without reservation as against the Settling Defendants.

7.6 Dismissal of Other Actions

(1) Upon the Effective Date, each Settlement Class Member in the Ontario and BC Actions shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.

(2) Upon the Effective Date, all Other Actions commenced in British Columbia or Ontario by any Settlement Class Member shall be dismissed against the Releasees, without costs and with prejudice.

(3) Robert Meloche will seek leave from the Quebec Superior Court to discontinue upon the Effective Date his Motion for the Authorization to Institute a Class Action (Court No. 500-06-000270-047) against the Settling Defendants, without cost and without reservations.

7.7 Material Term

(1) The releases contemplated in this Section shall be considered a material term of the Settlement Agreement and the failure of any Court to approve the releases contemplated herein shall give rise to a right of termination pursuant to Section 6.1 of the Settlement Agreement.

Section 8 - Bar Order, Waiver of Solidarity Order and Other Claims

8.1 British Columbia and Ontario Bar Order

(1) BC and Ontario Counsel shall seek bar orders from the BC Court and the Ontario Court providing for the following:

- (a) all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirator that is not a Releasee or any other person or party, against a Releasee, or by a Releasee against any Non-Settling Defendant or any named or unnamed co-conspirator that is not a Releasee, are barred, prohibited and enjoined in accordance with the terms of this Section (unless such claim is made in respect of a claim by a person who has validly opted out of the Proceedings);
- (b) if the BC Court or Ontario Court, as applicable, ultimately determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:
 - A. the Ontario and BC Plaintiffs and Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
 - B. the Ontario and BC Plaintiffs and Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or

unnamed co-conspirators that are not Releasees, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees and/or the Defendants, only those claims for damages, costs, and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees and/or the Defendants to the Ontario and BC Plaintiffs and Settlement Class Members, if any, and, for greater certainty, the Ontario and BC Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators who are not Releasees, to the extent provided by law; and

C. the Ontario and BC Courts shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the relevant Proceeding, whether or not the Releasees remain in the relevant Proceeding or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the relevant Proceeding and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceeding and shall not be binding on the Releasees in any other proceeding;

(c) a Non-Settling Defendant may, on motion to the BC Court or to the Ontario Court, as applicable, determined as if the Settling Defendants remained parties to the relevant Proceedings, and on at least ten (10) days notice to Counsel for the Settling Defendants, and not to be brought unless and until the relevant Proceedings against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

A. documentary discovery and an affidavit of documents from the Settling Defendants in accordance with that Court's rules of procedure;

- B. oral discovery of a representative of the Settling Defendants;
 - C. leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
 - D. the production of a representative of the Settling Defendants to testify at trial.
- (d) the Settling Defendants retain all rights to oppose any motion brought pursuant to Section 8.1(1)(c);
- (e) on any motion brought pursuant to Section 8.1(1)(c), the BC or Ontario Court, as applicable, may make such orders as to costs and other terms as it considers appropriate;
- (f) to the extent that such an order is granted and discovery is provided to a Non-Settling Defendant, a copy of all discovery provided, whether oral or documentary in nature, shall be provided by the Settling Defendants to the Plaintiffs and Class Counsel within ten (10) days of such discovery being provided to a Non-Settling Defendant;
- (g) the BC and Ontario Courts will retain an ongoing supervisory role over the discovery process and the Settling Defendants will attorn to the jurisdiction of the BC and Ontario Courts for these (but no other) purposes; and
- (h) a Non-Settling Defendant may effect service of the motion(s) referred to in Section 8.1(1)(c) on a Settling Defendant by service on Counsel for the Settling Defendants in the relevant Proceedings.

8.2 Quebec Waiver or Renunciation of Solidarity Order

- (1) Quebec Counsel shall seek a waiver or renunciation of solidarity from the Quebec Court providing for the following:

- (a) the Quebec Plaintiffs and the Settlement Class Members in the Quebec Action expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees;
- (b) the Quebec Plaintiffs and the Settlement Class Members in the Quebec Action shall henceforth only be able to claim and recover damages, including punitive damages, interests and costs (including investigative costs claimed pursuant to section 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of Proportionate Liability of the Non-Settling Defendants;
- (c) any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action; and
- (d) the ability of Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Quebec Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Quebec Code of Civil Procedure*.

8.3 Claims against Other Entities Reserved

- (1) Except as provided herein, this Settlement Agreement does not settle, compromise, release or limit in any way whatsoever any claim by Settlement Class Members against any person other than the Releasees.

Section 9 - Effect of Settlement

9.1 No Admission of Liability

- (1) Whether or not this Settlement Agreement is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be deemed, construed or interpreted to be an admission of

any violation of any statute or law, or of any wrongdoing or liability by the Settling Defendants, or of the truth of any of the claims or allegations contained in the Proceedings or any other pleading filed by the Plaintiffs.

9.2 Agreement Not Evidence

(1) The Parties agree that, whether or not it is terminated, this Settlement Agreement and anything contained herein, and any and all negotiations, documents, discussions and proceedings associated with this Settlement Agreement, and any action taken to carry out this Settlement Agreement, shall not be referred to, offered as evidence or received in evidence in any pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, to defend against the assertion of Released Claims, or as otherwise required by law.

9.3 No Further Litigation

(1) No Class Counsel, nor anyone currently or hereafter employed by or a partner with Class Counsel, may participate or be involved in or in any way assist with respect to any claim made or action commenced by any person which relates to or arises from the Released Claims, except in relation to the continued prosecution of the Proceedings against any Non-Settling Defendant or unnamed co-conspirators that are not Releasees or, if the Proceedings are not certified or authorized, the continuation of the claims asserted in the Proceedings on an individual basis or otherwise against any Non-Settling Defendant or unnamed co-conspirator that is not a Releasee. Moreover, these persons may not divulge to anyone for any purpose any information obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such information is otherwise publicly available or unless ordered to do so by a court.

(2) Section 9.3(1) shall be inoperative to the extent that it requires any lawyer who is a member of the Law Society of British Columbia to breach his or her obligations under Section 3.2-10 of the Law Society of British Columbia's *Code of Professional Conduct for British*

Columbia by refraining from participation or involvement in any claim or action in a British Columbia court.

Section 10 - Certification or Authorization for Settlement Only

(1) Ontario Counsel will apply to the Ontario Court to certify the Ontario Action as a class proceeding as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) BC Counsel will apply to the BC Court to certify the BC Action in an amended form as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(3) Quebec Counsel will apply to the Quebec Court to authorize the Quebec Action in an amended form as against the Settling Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(4) The Parties agree that the only common issue that they will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes in the motions for certification or authorization of the relevant Proceedings and for the approval of this Settlement Agreement.

(5) The Parties agree that the certification or authorization of the relevant Proceedings as against the Settling Defendants for the purpose of implementing this Settlement Agreement, shall not derogate in any way from the rights of the Plaintiffs as against the Non-Settling Defendants and other parties.

Section 11 - Notice to Settlement Classes

11.1 Notices Required

(1) The proposed Settlement Classes shall be given a single notice of (i) the certification or authorization of the Proceedings as class proceedings as against the Settling Defendants for settlement purposes; (ii) the hearings at which the Courts will be asked approve the Settlement

Agreement; and (iii) if they are brought with the hearings to approve the Settlement Agreement, the hearings to approve Class Counsel Fees and/or a Distribution Protocol.

11.2 Form and Distribution of Notices

(1) The notices shall be in a form agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on the form of the notices, the notices shall be in a form ordered by the Courts.

(2) The notices shall be disseminated by a method agreed upon by the Parties and approved by the Courts or, if the Parties cannot agree on a method for disseminating the notices, the notices shall be disseminated by a method ordered by the Courts.

Section 12 - Administration and Implementation

12.1 Mechanics of Administration

(1) Except to the extent provided for in this Settlement Agreement, the mechanics of the implementation and administration of this Settlement Agreement and Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

12.2 Information and Assistance

(1) The Settling Defendants will make reasonable efforts to compile a list of the names and addresses of those persons, if any, in Canada who purchased DRAM from them or from the Releasees during the Class Period and the Purchase Price paid by each such person for such purchases.

(2) The information required by Section 12.2(1) shall be delivered to Class Counsel by no later than (14) fourteen days prior to the First Publication of Notice Date, provided that Class Counsel will have delivered to Counsel for the Settling Defendants at least twenty-one (21) days advance written notice of the First Publication of Notice Date. The information shall be delivered in Microsoft Excel or such other format as may be agreed upon by Counsel for the Settling Defendants and Class Counsel.

- (3) Class Counsel may use the information provided under Section 12.2(1)
 - (a) to facilitate the dissemination of the notices required in Section 11.1;
 - (b) to advise persons in Canada who purchased DRAM Products from the Settling Defendants during the Class Period of any subsequent settlement agreement reached in the Proceedings, any related approval hearings, and any other major steps in the Proceedings;
 - (c) to facilitate the claims administration process with respect to this Settlement Agreement and any other settlement agreement achieved in the Proceedings;
and
 - (d) as otherwise authorized in Sections 4.1 to 4.2.

- (4) All information provided by the Settling Defendants pursuant to Section 12.2(1) shall be dealt with in accordance with Sections 4.1 to 4.2. If this Settlement Agreement is terminated, all information provided by the Settling Defendants pursuant to Section 12.2(1) shall be dealt with in accordance with Section 6.2(1)(d) and no record of the information so provided shall be retained by Class Counsel in any form whatsoever.

Section 13 - Class Counsel Fees and Administration Expenses

13.1 Class Counsel Fees and Administration Expenses

- (1) Class Counsel may seek the Courts' approval to pay Class Counsel Fees and Administration Expenses contemporaneous with seeking approval of this Settlement Agreement or at such other time as they may determine in their sole discretion.

- (2) The Settling Defendants shall not be liable for any fees, disbursements or taxes of the lawyers, experts, advisors, agents, or representatives retained by Class Counsel, the Plaintiffs or the Settlement Class Members.

Section 14 - Miscellaneous

14.1 Motions for Directions

(1) Class Counsel or the Settling Defendants may apply to the BC Court and/or such other Courts as may be required by the Courts for directions in respect of the interpretation, implementation and administration of this Settlement Agreement. Unless the Courts order otherwise, motions for directions that do not relate specifically to matters affecting the Ontario Actions, Settlement Class Members in the Ontario Actions, the Quebec Action or/and Settlement Class Members in the Quebec Action shall be determined by the BC Court.

(2) All motions contemplated by this Settlement Agreement shall be on notice to the Parties.

14.2 Releasees Have No Liability for Administration

(1) The Releasees have no responsibility for and no liability whatsoever with respect to the administration of the Settlement Agreement or Distribution Protocol.

14.3 Headings, etc.

(1) In this Settlement Agreement:

- (a) the division of the Settlement Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Settlement Agreement; and
- (b) the terms "this Settlement Agreement", "hereof", "hereunder", "herein", and similar expressions refer to this Settlement Agreement and not to any particular Section or other portion of this Settlement Agreement.

14.4 Computation of Time

(1) In the computation of time in this Settlement Agreement, except where a contrary intention appears,

- (a) where there is a reference to a number of days between two events, the number of days shall be counted by excluding the day on which the first event happens and including the day on which the second event happens, including all calendar days; and
- (b) only in the case where the time for doing an act expires on a holiday, the act may be done on the next day that is not a holiday.

14.5 Ongoing Jurisdiction

- (1) Each of the Courts shall retain exclusive jurisdiction over each Proceeding commenced in its jurisdiction, the Parties thereto and the Class Counsel Fees in those Proceedings.
- (2) No Party shall ask a Court to make any order or give any direction in respect of any matter of shared jurisdiction unless that order or direction is conditional upon a complementary order or direction being made or given by the other Court(s) with which it shares jurisdiction over that matter.
- (3) Notwithstanding Sections 14.5(1) and 14.5(2), the BC Court shall exercise jurisdiction with respect to implementation, administration, interpretation and enforcement of the terms of this Settlement Agreement. Issues related to the administration of this Settlement Agreement, the Trust Account, and other matters not specifically related to the claim of a Settlement Class Member in the Ontario Actions or a Settlement Class Member in the Quebec Action shall be determined by the BC Court.

14.6 Governing Law

- (1) This Settlement Agreement shall be governed by and construed and interpreted in accordance with the laws of the Province of British Columbia.

14.7 Entire Agreement

- (1) This Settlement Agreement constitutes the entire agreement among the Parties, and supersedes all prior and contemporaneous understandings, undertakings, negotiations,

representations, promises, agreements, agreements in principle and memoranda of understanding in connection herewith.

14.8 Amendments

(1) This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto.

14.9 Binding Effect

(1) This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Settling Defendants, the Releasors, the Releasees and all of their successors and assigns. Without limiting the generality of the foregoing, each and every covenant and agreement made herein by the Plaintiffs shall be binding upon all Releasors and each and every covenant and agreement made herein by the Settling Defendants shall be binding upon all of the Releasees.

14.10 Counterparts

(1) This Settlement Agreement may be executed in counterparts, all of which taken together will be deemed to constitute one and the same agreement, and a facsimile signature shall be deemed an original signature for purposes of executing this Settlement Agreement.

14.11 Negotiated Agreement

(1) This Settlement Agreement has been the subject of negotiations and discussions among the undersigned, each of which has been represented and advised by competent counsel, so that any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Settlement Agreement shall have no force and effect. The Parties further agree that the language contained in or not contained in previous drafts of this Settlement Agreement, or any agreement in principle, shall have no bearing upon the proper interpretation of this Settlement Agreement.

14.12 Language

(1) The Parties acknowledge that they have required and consented that this Settlement Agreement and all related documents be prepared in English; les parties reconnaissent avoir exigé que la présente convention et tous les documents connexes soient rédigés en anglais. Nevertheless, Class Counsel and/or a translation firm mandated by Class Counsel shall prepare a French translation of the Settlement Agreement, notices, orders or other documents contemplated by this Settlement Agreement, the cost of which shall be paid from the Settlement Amount. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

14.13 Transaction

(1) The present Settlement Agreement constitutes a transaction in accordance with Articles 2631 and following of the *Civil Code of Quebec*, and the Parties are hereby renouncing to any errors of fact, of law and/or of calculation.

14.14 Recitals

(1) The recitals to this Settlement Agreement are true and form part of the Settlement Agreement.

14.15 Schedules

(1) The Schedules annexed hereto form part of this Settlement Agreement.

14.16 Acknowledgements

(1) Each of the Parties hereby affirms and acknowledges that:

- (a) he, she or a representative of the Party with the authority to bind the Party with respect to the matters set forth herein has read and understood the Settlement Agreement;
- (b) the terms of this Settlement Agreement and the effects thereof have been fully explained to him, her or the Party's representative by his, her or its counsel;

- (c) he, she or the Party's representative fully understands each term of the Settlement Agreement and its effect; and
- (d) no Party has relied upon any statement, representation or inducement (whether material, false, negligently made or otherwise) of any other Party with respect to the first Party's decision to execute this Settlement Agreement.

14.17 Authorized Signatures

- (1) Each of the undersigned represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Settlement Agreement.

14.18 Notice

- (1) Where this Settlement Agreement requires a Party to provide notice or any other communication or document to another, such notice, communication or document shall be provided by email, facsimile or letter by overnight delivery to the representatives for the Party to whom notice is being provided, as identified below:

For the Plaintiffs and for Class Counsel in the Proceedings:

J. J. Camp, Q.C. and Reidar Mogerman

CAMP FIORANTE MATTHEWS MOGERMAN
4th Floor, 856 Homer St.
Vancouver, BC V6B 2W5
Tel: 604-689-7555
Fax: 604-689-7554
Email: jjcamp@cfmlawyers.ca
rmogerman@cfmlawyers.ca

Heather Rumble Peterson

SUTTS, STROSBERG LLP
600-251 Goyeau Street
Windsor, ON N9A 6V4
Tel: 1-800-229-5323
Fax: 1-866-316-5308
Email: hpeterson@strosbergco.com

Daniel Belleau and Maxime Nasr

BELLEAU LAPOINTE
306 Place d'Youville, Suite B-10
Montreal, QC H2Y 2B6
Tel: 514-987-6700
Fax: 514-987-6886
Email: dbelleau@belleaulapointe.com
mnasr@belleaulapointe.com

Jonathan Foreman

HARRISON PENSA LLP
450 Talbot Street, P.O. Box 3237
London, ON N6A 5J6
Tel: 519-679-9660
Fax: 519-667-3362
Email: jforeman@harrisonpensa.com

For the Settling Defendants:

Katherine Kay and Eliot Kolers

STIKEMAN ELLIOT LLP
199 Bay Street
5300 Commerce Court West
Toronto ON M5L 1B9
Tel: 416.869.5500
Fax: 416.947.0866
Email: kkay@stikeman.com
ekolers@stikeman.com

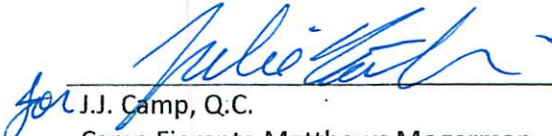
14.19 Date of Execution

(1) The Parties have executed this Settlement Agreement as of the date on the cover page.

**PRO-SYS CONSULTANTS, KHALID EIDOO, CYGNUS ELECTRONICS CORPORATION,
OPTION CONSOMMATEURS**, on their own behalf and on behalf of the Settlement Class
by their counsel:

Signature of Authorized Signatory:

Name of Authorized Signatory:



for J.J. Camp, Q.C.
Camp Fiorante Matthews Mogerman
BC Class Counsel


Signature of Authorized Signatory:

Name of Authorized Signatory:

Heather Rumble Peterson
Sutts, Strosberg LLP
Ontario Class Counsel

Signature of Authorized Signatory:


Name of Authorized Signatory:



for Jonathan J. Foreman
Harrison Pensa
Ontario Class Counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:



Maxime Nasr
Belleau Lapointe
Quebec Class Counsel

For the Settling Defendants:

Katherine Kay and Eliot Kolers

STIKEMAN ELLIOT LLP
199 Bay Street
5300 Commerce Court West
Toronto ON M5L 1B9
Tel: 416.869.5500
Fax: 416.947.0866
Email: kkay@stikeman.com
ekolers@stikeman.com

14.19 Date of Execution

- (1) The Parties have executed this Settlement Agreement as of the date on the cover page.
PRO-SYS CONSULTANTS, KHALID EIDOO, CYGNUS ELECTRONICS CORPORATION, OPTION CONSOMMATEURS, on their own behalf and on behalf of the Settlement Class by their counsel:


Signature of Authorized Signatory:

Name of Authorized Signatory:

J.J. Camp, Q.C.
Camp Fiorante Matthews Mogerman
BC Class Counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:



Heather Rumble Peterson
Sutts, Strosberg LLP
Ontario Class Counsel

Signature of Authorized Signatory:

Name of Authorized Signatory:

Jonathan J. Foreman
Harrison Pensa
Ontario Class Counsel


Signature of Authorized Signatory:

Name of Authorized Signatory:

Maxime Nasr
Belleau Lapointe
Quebec Class Counsel

INFINEON TECHNOLOGIES AG

Signature of Authorized Signatory:
Name of Authorized Signatory:
Position:




Michael Guler
General Counsel
i.v.

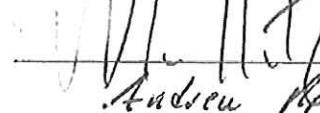
MICHAEL GULER
CORP. LEGAL COUNSEL

Signature of Authorized Signatory:
Name of Authorized Signatory:
Position:

INFINEON TECHNOLOGIES NORTH AMERICA CORP.

Signature of Authorized Signatory:
Name of Authorized Signatory:
Position:



Jean Baptiste Coire
President


Andrew Hill
CFO

SCHEDULE "A"

Court and File No.	Plaintiffs' Counsel	Style of Cause	Named Defendants	Settlement Class
BC Action				
Supreme Court of British Columbia (Vancouver Registry) (Court File No. L043141)	Camp Fiorante Matthews Mogerman	<i>Pro-Sys Consultants v. Infineon Technologies AG, et al.</i>	Infineon Technologies AG, Infineon Technologies North America Corp, Hynix Semiconductor Inc., Hynix Semiconductor America Inc., Hynix Semiconductor Manufacturing America, Inc., Samsung Electronics Co., Ltd. Samsung Semiconductor, Inc., Samsung Electronics America, Inc., Samsung Electronics Canada Inc., Micron Technology, Inc. and Micron Semiconductor Products, Inc. doing business as Crucial Technologies, Elpida Memory, Inc., Elpida Memory (USA) Inc., Nanya Technology Corporation, Nanya Technology Corporation USA, NEC Corporation, NEC Corporation of America, NEC Canada Inc., Renesas Electronics Corporation fka NEC Electronics Corporation, Renesas Electronics America Inc. fka NEC Electronics America, Inc., Hitachi, Ltd., Hitachi America, Ltd., Hitachi Electronic Devices (USA), Inc., Hitachi Power Systems Canada Ltd. and Renesas Electronics Canada Ltd.	All persons resident in British Columbia at the time of purchase and/or at the time of notice who purchased DRAM Products during the Class Period, except Excluded Persons.

Court and File No.	Plaintiffs' Counsel	Style of Cause	Named Defendants	Settlement Class
Ontario Action				
<p>Ontario Superior Court of Justice (Toronto) (Court File No. 05-CV-4340)</p>	<p>Sutts, Strosberg LLP Harrison Pensa LLP</p>	<p><i>Khalid Eidoo and Cygnus Electronics Corporation v. Infineon Technologies AG, et al.</i></p>	<p>Infineon Technologies AG, Infineon Technologies Corporation, Infineon Technologies North America Corporation, Hynix Semiconductor Inc., Hynix Semiconductor America Inc., Hynix Semiconductor Manufacturing America, Inc., Samsung Electronics Co., Ltd., Samsung Semiconductor, Inc., Samsung Electronics America, Inc., Samsung Electronics Canada Inc., Micron Technology, Inc., Micron Semiconductor Products, Inc. o/a Crucial Technologies. Mosel Vitelic Corp., Mosel Vitelic Inc. and Elpida Memory, Inc.</p>	<p>(i) All persons resident in Canada at the time of purchase and/or at the time of notice who purchased DRAM Products during the Class Period, except Excluded Persons and persons who are included in the B.C. Settlement Class and the Quebec Settlement Class; and (ii) all persons resident in the United States at the time of purchase and/or at the time of notice who purchased DRAM Products in Canada during the Class Period to the extent that such persons have actual or potential claims as against the Defendants in respect of DRAM Products that have not been wholly or completely settled or extinguished in the U.S. Settlement or otherwise in respect of the U.S. Litigation.</p>

Court and File No.	Plaintiffs' Counsel	Style of Cause	Named Defendants	Settlement Class
Ontario Additional Action				
Ontario Superior Court of Justice (Toronto) (Court File No. 10-CV-15178)	Sutts, Strosberg LLP Harrison Pensa LLP	<i>Khalid Eidoo and Cygnus Electronics Corporation v. Hitachi Ltd. et al.</i>	Hitachi Ltd., Hitachi America, Hitachi Electronic Devices (USA), Hitachi Canada Ltd., Mitsubishi Electronic Corporation, Mitsubishi Electric Sales Canada Inc., Mitsubishi Electric & Electronics USA, Inc., Nanya Technology Corporation, Nanya Technology Corporation USA, NEC Corporation, NEC Corporation of America, NEC Canada, Renesas Electronics Corporation fka NEC Electronics Corporation, Renesas Electronics America, Inc. fka NEC Electronics America, Inc., Renesas Electronics Canada Ltd., Toshiba Corporation, Toshiba America Electronics Components Inc., Toshiba of Canada Limited, Winbond Electronics Corporation and Winbond Electronics Corporation America	(i) All persons resident in Canada at the time of purchase and/or at the time of notice who purchased DRAM Products during the Class Period, except Excluded Persons and persons who are included in the B.C. Settlement Class and the Quebec Settlement Class; and (ii) all persons resident in the United States at the time of purchase and/or at the time of notice who purchased DRAM Products in Canada during the Class Period to the extent that such persons have actual or potential claims as against the Defendants in respect of DRAM Products that have not been wholly or completely settled or extinguished in the U.S. Settlement or otherwise in respect of the U.S. Litigation.

Court and File No.	Plaintiffs' Counsel	Style of Cause	Named Defendants	Settlement Class
Quebec Action				
<p>Superior Court of Quebec (Montreal) (File No. 500-06-0000251-047)</p> <p>Court of Appeal of Quebec (File No. 500-09-018872-085)</p> <p>Supreme Court of Canada (No. 34617)</p>	<p>Belleau Lapointe</p>	<p><i>Option Consommateurs and Claudette Cloutier v. Infineon Technologies AG, et al.</i></p>	<p>Infineon Technologies AG, Infineon Technologies North America Corporation, Micron Technology, Inc., Hynix Semiconductor Inc., Samsung Electronics Co., Ltd., Samsung Semiconductor, Inc.,</p>	<p>All persons resident in Quebec at the time of purchase and/or at the time of notice who purchased DRAM Products during the Class Period, except Excluded Persons and any legal person established for a private interest, partnership or association which at any time between October 5, 2003 and October 5, 2004 had under its direction or control more than 50 persons bound to it by contract of employment or that is not dealing at arm's length with Option Consommateurs.</p>

SCHEDULE “B”

No. L043141
 Vancouver Registry

In the Supreme Court of British Columbia

Between

Pro-Sys Consultants Ltd.

Plaintiff

and

Infineon Technologies AG, Infineon Technologies North America Corp., Hynix Semiconductor Inc., Hynix Semiconductor America Inc., Hynix Semiconductor Manufacturing America, Inc., Samsung Electronics Co., Ltd. Samsung Semiconductor, Inc., Samsung Electronics America, Inc., Samsung Electronics Canada Inc., Micron Technology, Inc. and Micron Semiconductor Products, Inc. doing business as Crucial Technologies, Elpida Memory, Inc., Elpida Memory (USA) Inc., Nanya Technology Corporation, Nanya Technology Corporation USA, NEC Corporation, NEC Corporation of America, NEC Canada, Renesas Electronics Corporation fka NEC Electronics Corporation, Renesas Electronics America Inc. fka NEC Electronics America, Inc., Hitachi, Ltd., Hitachi America, Ltd., Hitachi Electronic Devices (USA), Inc., Hitachi Power Systems Canada Ltd. and Renesas Electronics Canada Ltd.

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION REGARDING:
 INFINEON CERTIFICATION FOR SETTLEMENT AND
 APPROVAL OF NOTICE OF SETTLEMENT APPROVAL HEARING**

))
))
BEFORE)	THE HONOURABLE)
)	MR. JUSTICE MASUHARA)
))
))
))
))

dd/mmm/yyyy

ON THE APPLICATION of the plaintiff coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on dd/mmm/yyyy and on hearing [counsel appearing]; and on reading the materials filed, including the Settlement Agreement;

THIS COURT ORDERS that:

1. Except to the extent they are modified by this order, the definitions set out in the Settlement Agreement attached as Schedule "A" apply to and are incorporated into this order.

Certification for Settlement

2. The BC Action is certified as a class proceeding as against the Settling Defendants only and for settlement purposes only.

3. The BC Settlement Class is defined as:

All persons resident in British Columbia at the time of purchase and/or at the time of notice who purchased DRAM Products during the Class Period, except Excluded Persons;

4. The Plaintiff Pro-Sys Consultants Ltd. is appointed as the representative plaintiff for the BC Settlement Class.

5. The BC Action is certified on the basis of the following issue common to the BC Settlement Class:

Did the Settling Defendants, or any of them, conspire to harm the Settlement Class Members during the Class Period?

6. The certification of the BC Action as against the Settling Defendants for settlement purposes pursuant to this order, including the definition of the BC Settlement Class and the Common Issue, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing BC Action.

7. The deadline to opt out of the BC Action has passed and no BC Settlement Class Member may opt out in the future.

Notices of Settlement Approval Hearings

8. The Long-Form Notice of Certification and Settlement Approval Hearings in substantially the form attached hereto as Schedule “B” is approved.
9. The Short-Form Notice of Certification and Settlement Approval Hearings in substantially the form attached hereto as Schedule “C” is approved.
10. The Plan of Dissemination of the Notices of Certification and Settlement Approval Hearings in the form attached as Schedule “D” is approved and the Notices of Settlement Approval Hearings shall be disseminated in accordance with the Plan of Dissemination.
11. This order is contingent upon parallel orders being made by the Ontario Court and the Quebec Court, and the terms of this order shall not be effective unless and until such orders are made by the Ontario Court and the Quebec Court.
12. Endorsement of this order by counsel for the Non-Settling Defendants and the Settled Defendants shall be dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the plaintiff

J.J. Camp, Q.C.

Signature of lawyer for Infineon
Technologies AG and Infineon Technologies
North America Corp.

Katherine Kay

By the Court

Registrar

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE) Monday, the 9th day
)
JUSTICE PERELL) of June, 2014

B E T W E E N:

KHALID EIDOO and
CYGNUS ELECTRONICS CORPORATION

Plaintiffs

- and -

INFINEON TECHNOLOGIES AG, INFINEON TECHNOLOGIES
CORPORATION, INFINEON TECHNOLOGIES NORTH AMERICA
CORPORATION, HYNIX SEMICONDUCTOR INC., HYNIX SEMICONDUCTOR
AMERICA INC., HYNIX SEMICONDUCTOR MANUFACTURING
AMERICA, INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG
SEMICONDUCTOR, INC., SAMSUNG ELECTRONICS AMERICA, INC.
SAMSUNG ELECTRONICS CANADA INC., MICRON TECHNOLOGY, INC.
MICRON SEMICONDUCTOR PRODUCTS, INC. o/a CRUCIAL TECHNOLOGIES,
MOSEL VITELIC CORP., MOSEL VITELIC INC. and ELPIDA MEMORY, INC.

Defendants

Court File No. CV-10-15178

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

KHALID EIDOO and
CYGNUS ELECTRONICS CORPORATION

Plaintiffs

-and-

HITACHI LTD., HITACHI AMERICA, HITACHI ELECTRONIC DEVICES (USA), HITACHI CANADA LTD.,
MITSUBISHI ELECTRONIC CORPORATION, MITSUBISHI ELECTRIC SALES CANADA INC.,
MITSUBISHI ELECTRIC & ELECTRONICS USA, INC., NANYA TECHNOLOGY CORPORATION, NANYA
TECHNOLOGY CORPORATION USA, NEC CORPORATION, NEC CORPORATION OF AMERICA, NEC
CANADA, RENESAS ELECTRONICS CORPORATION fka NEC ELECTRONICS CORPORATION,
RENESAS ELECTRONICS AMERICA, INC. fka NEC ELECTRONICS AMERICA, INC., RENESAS
ELECTRONICS CANADA LTD., TOSHIBA CORPORATION, TOSHIBA AMERICA ELECTRONICS
COMPONENTS INC., TOSHIBA OF CANADA LIMITED, WINBOND ELECTRONICS CORPORATION
AND WINBOND ELECTRONICS CORPORATION AMERICA

Defendants

Proceeding Under the *Class Proceedings Act*, 1992

ORDER

THIS MOTION made by the Plaintiffs (the “Ontario Plaintiffs”) for an Order (i) certifying the action bearing Court File Number 05-CV-4340 (Windsor) (the “Ontario Action”) as against the Defendants Infineon Technologies AG and Infineon Technologies North America Corporation (the “Settling Defendants”) for settlement purposes; and, (ii) approving the Notice of Certification and Approval Hearings was heard this day at the Court House, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including the Settlement Agreement attached to this Order as **Schedule “A”** and on hearing the submissions of counsel for the Ontario Plaintiffs, counsel for the Settling Defendants and counsel for the Non-Settling Defendants in the Ontario Action and the Defendants in the action bearing Court File Number CV-10-15178 (Windsor) (collectively, the “Non-Settling Defendants” and the “Ontario Actions”);

AND ON BEING ADVISED that (a) the Ontario Plaintiffs consent to this Order; (b) the Settling Defendants consent to this Order and (c) the Non-Settling Defendants do not oppose this Order:

1. **THIS COURT ORDERS** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreements apply to and are incorporated into this Order.

2. **THIS COURT ORDERS** that the Ontario Action is certified as a class proceeding as against the Settling Defendants only and for settlement purposes only.

3. **THIS COURT ORDERS** that the Ontario Settlement Class is defined as:

(i) all persons resident in Canada at the time of purchase and/or at the time of notice who purchased DRAM Products during the Class Period, except Excluded Persons and persons who are included in the BC Settlement Class and the Quebec Settlement Class; and (ii) all persons resident in the United States at the time of purchase and/or at the time of notice who purchased DRAM Products during the Class Period to the extent that such persons have actual or potential claims as against the Defendants in respect of DRAM Products that have not been wholly or completely settled or extinguished in the U.S. Settlement or otherwise in respect of the U.S. Litigation.

4. **THIS COURT ORDERS** that the Ontario Plaintiffs Khalid Eidoo and Cygnus Electronics Corporation are appointed as the representative plaintiffs for the Ontario Settlement Class.

5. **THIS COURT ORDERS** that the Ontario Action is certified on the basis that the following issue is common to the Ontario Settlement Class:

Did the Settling Defendant(s), or any of them, conspire to harm the Settlement Class Members during the Class Period?

6. **THIS COURT ORDERS** that the certification of the Ontario Action as against the Settling Defendants for settlement purposes pursuant to this Order, including the definition of the Ontario Settlement Class and the Common Issue, is without prejudice to the rights and defences of the Non-Settling Defendants in connection with the ongoing Ontario Actions.

7. **THIS COURT DECLARES** that the opt-out period provided pursuant to the order of this Court made on March 27, 2012 in Court File Number CV-05-CV-4340 (Windsor) satisfies the requirement of section 9 of the *Class Proceedings Act, 1992*, S.O. 1992, c. 6 for the purposes of the Ontario Action, that no further opt-out period is necessary for the Ontario Action and that the opt-out period expired on June 2, 2012.

8. **THIS COURT ORDERS** that this Order is binding upon each Ontario Settlement Class Member including those Persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the *Rules of Civil Procedure* are dispensed with in respect of the Ontario Action.

9. **THIS COURT ORDERS** that the Long-Form Notice of Certification and Approval Hearings in the form attached hereto as **Schedule "B"** is approved.

10. **THIS COURT ORDERS** that the Short-Form Notice of Certification and Approval Hearings in the form attached hereto as **Schedule "C"** is approved.

11. **THIS COURT ORDERS** that the Plan of Dissemination of the Notice of Certification and Approval Hearings in the form attached as **Schedule "D"** is approved.

12. **THIS COURT ORDERS** that this order is contingent upon parallel orders being made by the BC Court and the Quebec Court, and the terms of this order shall not be effective unless and until such orders are made by the BC Court and the Quebec Court

THE HONOURABLE JUSTICE PERELL

COUR SUPÉRIEURE

CANADA
PROVINCE DE QUEBEC
DISTRICT DE MONTRÉAL

N° 500-06-000251-047

DATE : Le _____ 2014

EN PRÉSENCE DE : L'HONORABLE PIERRE-C. GAGNON, J.C.S.

OPTION CONSOMMATEURS

Représentante

-et-

CLAUDETTE CLOUTIER

Personne Désignée

c.

INFINEON TECHNOLOGIES AG
INFINEON TECHNOLOGIES NORTH AMERICA CORPORATION
Défenderesses

JUGEMENT PRONONÇANT DES ORDONNANCES PRÉLIMINIAIRES

- [1] **CONSIDÉRANT** que le Tribunal est saisi d'une Requête pour l'obtention d'ordonnances préliminaires aux fins d'approbation d'une transaction;
- [2] **CONSIDÉRANT** les allégations contenues à cette requête;
- [3] **CONSIDÉRANT** les représentations des procureurs des parties à l'audition qui s'est tenue le • 2014;
- [4] **CONSIDÉRANT** le consentement des Défenderesses Infineon Technologies AG et Infineon Technologies North America Corporation;

POUR CES MOTIFS, LE TRIBUNAL :

- [5] **ACCUEILLE** la présente Requête pour l'obtention d'ordonnances préliminaires aux fins d'approbation d'une transaction;

[6] **AUTORISE** l'exercice du recours collectif contre les Défenderesses Infineon Technologies AG et Infineon Technologies North America Corporation à des fins de règlement seulement;

[7] **ATTRIBUE** à Option consommateurs le statut de représentante aux fins d'exercer ce recours collectif pour le compte du groupe décrit ci-après :

All persons resident in Quebec at the time of purchase and/or at the time of notice who purchased DRAM Products during the Class Period, except Excluded Persons and any legal person established for a private interest, partnership or association which at any time between October 5, 2003 and October 5, 2004 had under its direction or control more than 50 persons bound to it by contract of employment or that is not dealing at arm's length with Option Consommateurs.

[8] **IDENTIFIE** comme suit la principale question de faits et de droit qui sera traitée collectivement:

Did the Settling Defendants, or any of them, conspire to harm the Settlement Class Members during the Class Period?

[9] **APPROUVE** la forme et le fond des avis aux membres communiqués au soutien de la requête comme pièces R-● à R-●;

[10] **APPROUVE** le plan de diffusion des avis communiqué au soutien de la requête comme pièce R-●;

[11] **FIXE** la date de présentation de la requête pour approbation de la transaction au ● 2014 à ●h●;

[12] **ORDONNE** que tout membre du groupe qui souhaite faire valoir ses prétentions sur la transaction lors de l'audition sur l'approbation soit tenu de les faire parvenir par écrit aux procureurs de la Représentante au plus tard le ● 2014;

[13] **LE TOUT** sans frais.

PIERRE-C. GAGNON, J.C.S.

SCHEDULE "C"

No. L043141
Vancouver Registry

In the Supreme Court of British Columbia

Between

Pro-Sys Consultants Ltd.

Plaintiff

and

Infineon Technologies AG, Infineon Technologies North America Corp., Hynix Semiconductor Inc., Hynix Semiconductor America Inc., Hynix Semiconductor Manufacturing America, Inc., Samsung Electronics Co., Ltd. Samsung Semiconductor, Inc., Samsung Electronics America, Inc., Samsung Electronics Canada Inc., Micron Technology, Inc. and Micron Semiconductor Products, Inc. doing business as Crucial Technologies, Elpida Memory, Inc., Elpida Memory (USA) Inc., Nanya Technology Corporation, Nanya Technology Corporation USA, NEC Corporation, NEC Corporation of America, NEC Canada, Renesas Electronics Corporation fka NEC Electronics Corporation, Renesas Electronics America Inc. fka NEC Electronics America, Inc., Hitachi, Ltd., Hitachi America, Ltd., Hitachi Electronic Devices (USA), Inc., Hitachi Power Systems Canada Ltd. and Renesas Electronics Canada Ltd.

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

**ORDER MADE AFTER APPLICATION
FOR APPROVAL OF INFINEON SETTLEMENT AGREEMENT**

ON THE APPLICATION of the plaintiff coming on for hearing at the Courthouse, 800 Smithe Street, Vancouver, BC, on dd/mmm/yyyy and on hearing [counsel appearing]; and on reading the materials filed, including the Settlement Agreement;

THIS COURT ORDERS that:

1. Except to the extent they are modified by this order, the definitions set out in the Settlement Agreement attached as Schedule "A" apply to and are incorporated into this order.
2. The Settlement Agreement is fair, reasonable and in the best interests of the BC Settlement Class.
3. The Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, R.S.B.C. 1996, c. 50 and shall be implemented in accordance with its terms.
4. The Settlement Agreement is incorporated by reference to and forms part of this order and is binding upon the representative plaintiff and all BC Settlement Class Members.
5. Upon the Effective Date, each BC Settlement Class Member shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
6. Upon the Effective Date, any Other Action commenced in British Columbia by any BC Settlement Class Member shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
7. This order, including the Settlement Agreement, is binding upon each BC Settlement Class Member including those persons who are minors or mentally incapable.
8. Upon the Effective Date, in accordance with s. 7.3(1) of the Settlement Agreement, each Releasor resident in British Columbia covenants not to sue and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims. The use of the terms "Releasors", "Releasees" and "Released Claims" in this order is a matter of form only for consistency with the Settlement Agreement.

9. Upon the Effective Date, each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other person, any action, suit, cause of action, claim or demand against any Releasee or any other person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators who are not Releasees.

10. All claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise by any Non-Settling Defendant, any named or unnamed co-conspirators who are not Releasees or any other person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, or any named or unnamed co-conspirators who are not Releasees, are barred, prohibited and enjoined in accordance with the terms of this order (unless such claim is made in respect of a claim by a person who has validly opted-out of this action).

11. If, in the absence of paragraph 10 above, the Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:

- (a) the BC Plaintiff and the BC Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;
- (b) the BC Plaintiffs and the BC Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators

and/or the Defendants in this action that are not Releasees, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in this action that are not Releasees, only those claims for damages, costs and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators and/or the Defendants in the this action that are not Releasees to the BC Plaintiffs and the BC Settlement Class Members, if any, and, for greater certainty, the BC Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators who are not Releasees, to the extent provided by law;

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of this action, whether or not the Releasees remain in this action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to this action and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the BC Action and shall not be binding on the Releasees in any other proceedings;

12. If, in the absence of paragraph 10 hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in this action.

13. A Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to the Proceedings and on at least ten (10) days notice to Counsel for the Settling Defendants, and not to be brought unless and until this action against the Non-

Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

- (a) documentary discovery and a list of documents in accordance with the *Supreme Court Civil Rules* from the Settling Defendants;
- (b) oral discovery of a representative of the Settling Defendants;
- (c) leave to serve a notice to admit on the Settling Defendants in respect of factual matters; and/or
- (d) the production of a representative of the Settling Defendants to testify at trial.

14. The Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 13. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 13. Notwithstanding any provision in this order, on any motion brought pursuant to paragraph 13, the Court may make such orders as to costs and other terms as it considers appropriate.

15. A Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 13 above on the Settling Defendants by service on Counsel for the Settling Defendants in this action.

16. For purposes of administration of this order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement.

17. Except as provided herein, this order does not affect any claims or causes of action that any BC Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators who are not Releasees in this action.

18. The Settling Defendants shall pay the Settlement Amount to BC Counsel as provided in section 3.1 of the Settlement Agreement.

19. BC Counsel shall hold the Settlement Amount, plus any accrued interest, in trust for the benefit of the Settlement Class and on the terms and conditions and with the powers, rights, duties and responsibilities set out in the Settlement Agreement.

20. Approval of the Settlement Agreement is contingent upon approval by the Ontario Court and the Quebec Court, and the terms of this order shall not be effective unless and until the Settlement Agreement is approved and the Ontario Actions have been dismissed with prejudice and without costs as against the Settling Defendants by the Ontario Court and the Quebec Action has been settled without costs and without reservation as against the Settling Defendants. If such orders are not secured in Ontario and Quebec, at the option of the Settling Defendants and in their sole discretion, this order shall be null and void and without prejudice to the rights of the parties to proceed with this action and any agreement between the parties incorporated in this order shall be deemed in any subsequent proceedings to have been made without prejudice.

21. This order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

22. This action is hereby dismissed against the Settling Defendants without costs and with prejudice, in accordance with the Settlement Agreement.

23. Endorsement of this order by counsel for the Non-Settling Defendants and the Settled Defendants is dispensed with.

THE FOLLOWING PARTIES APPROVE THE FORM OF THIS ORDER AND CONSENT TO EACH OF THE ORDERS, IF ANY, THAT ARE INDICATED ABOVE AS BEING BY CONSENT:

Signature of lawyer for the plaintiff

J.J. Camp, Q.C.

Signature of lawyer for Infineon
Technologies AG and Infineon Technologies
North America Corp.

Katherine Kay

By the Court

Registrar

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE)
) _____, the ___ day
JUSTICE PERELL)
) of _____, 2014

B E T W E E N:

KHALID EIDOO and
CYGNUS ELECTRONICS CORPORATION

Plaintiffs

- and -

INFINEON TECHNOLOGIES AG, INFINEON TECHNOLOGIES
CORPORATION, INFINEON TECHNOLOGIES NORTH AMERICA
CORPORATION, HYNIX SEMICONDUCTOR INC., HYNIX SEMICONDUCTOR
AMERICA INC., HYNIX SEMICONDUCTOR MANUFACTURING
AMERICA, INC., SAMSUNG ELECTRONICS CO., LTD., SAMSUNG
SEMICONDUCTOR, INC., SAMSUNG ELECTRONICS AMERICA, INC.
SAMSUNG ELECTRONICS CANADA INC., MICRON TECHNOLOGY, INC.
MICRON SEMICONDUCTOR PRODUCTS, INC. o/a CRUCIAL TECHNOLOGIES,
MOSEL VITELIC CORP., MOSEL VITELIC INC. and ELPIDA MEMORY, INC.

Defendants

Proceeding under the *Class Proceedings Act, 1992*

Court File No. CV-10-15178

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:

KHALID EIDOO and
CYGNUS ELECTRONICS CORPORATION

Plaintiffs

-and-

HITACHI LTD., HITACHI AMERICA, HITACHI ELECTRONIC DEVICES (USA), HITACHI CANADA LTD., MITSUBISHI ELECTRONIC CORPORATION, MITSUBISHI ELECTRIC SALES CANADA INC., MITSUBISHI ELECTRIC & ELECTRONICS USA, INC., NANYA TECHNOLOGY CORPORATION, NANYA TECHNOLOGY CORPORATION USA, NEC CORPORATION, NEC CORPORATION OF AMERICA, NEC CANADA, RENESAS ELECTRONICS CORPORATION fka NEC ELECTRONICS CORPORATION, RENESAS ELECTRONICS AMERICA, INC. fka NEC ELECTRONICS AMERICA, INC., RENESAS ELECTRONICS CANADA LTD., TOSHIBA CORPORATION, TOSHIBA AMERICA ELECTRONICS COMPONENTS INC., TOSHIBA OF CANADA LIMITED, WINBOND ELECTRONICS CORPORATION AND WINBOND ELECTRONICS CORPORATION AMERICA

Defendants

Proceeding Under the *Class Proceedings Act, 1992*

ORDER

THIS MOTION made by the Plaintiffs in the Ontario actions bearing Court File Numbers 05-CV-4340 and CV-10-15178 (collectively, the “Ontario Actions”) for an Order approving the settlement agreement entered into with the Defendants Infineon Technologies AG and Infineon Technologies North America Corporation (the “Settling Defendants”), was heard this day at the Court House, 130 Queen Street West, Toronto, Ontario.

ON READING the materials filed, including the settlement agreement dated , 2014 attached to this Order as **Schedule “A”** (the “Settlement Agreement”), and on hearing the submissions of counsel for the Ontario Plaintiffs, counsel for the Settling Defendants and counsel for the Non-Settling Defendants in the Ontario Actions;

AND ON BEING ADVISED that (a) the Plaintiffs in the Ontario Actions consent to this Order; and (b) the Settling Defendants consent to this Order:

1. **THIS COURT ORDERS AND DECLARES** that, except to the extent they are modified by this Order, the definitions set out in the Settlement Agreement apply to and are incorporated into this Order.
2. **THIS COURT DECLARES** that the Settlement Agreement is fair, reasonable and in the best interests of the Settlement Class in the Ontario Actions.
3. **THIS COURT ORDERS** that the Settlement Agreement is hereby approved pursuant to s. 29 of the *Class Proceedings Act, 1992* and shall be implemented in accordance with its terms.
4. **THIS COURT DECLARES** that the Settlement Agreement is incorporated by reference into and forms part of this Order and is binding upon the representative plaintiffs and all Settlement Class Members in the Ontario Actions.
5. **THIS COURT ORDERS** that any putative member of the Settlement Class in the Ontario Actions who has validly opted out of the Ontario Actions is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in the Ontario Actions.
6. **THIS COURT ORDERS** that all Settlement Class Members in the Ontario Actions are bound by the Settlement Agreement and may not opt out of the Ontario Actions in the future.

7. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Settlement Class Member in the Ontario Actions shall consent and shall be deemed to have consented to the dismissal as against the Releasees of any Other Actions he, she or it has commenced, without costs and with prejudice.
8. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Other Action commenced in Ontario by any Settlement Class Member in the Ontario Actions shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
9. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each Settlement Class Member in the Ontario Actions including those persons who are minors or mentally incapable and the requirements of Rules 7.04(1) and 7.08(4) of the Rules of Civil Procedure are dispensed with in respect of the Ontario Actions.
10. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall be conclusively deemed to have forever and absolutely released the Releasees from the Released Claims.
11. **THIS COURT ORDERS** that each Releasor shall not now or hereafter institute, continue, maintain or assert, either directly or indirectly, whether in Canada or elsewhere, on their own behalf or on behalf of any class or any other Person, any action, suit, cause of action, claim or demand against any Releasee or any other Person who may claim contribution or indemnity, or other claims over for relief, from any Releasee in respect

of any Released Claim or any matter related thereto, except for the continuation of the Proceedings against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.

12. **THIS COURT ORDERS AND DECLARES** that the use of the terms “Releasors” and “Released Claims” in this Order does not constitute a release of claims by those Settlement Class Members in the Ontario Actions who are resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors.
13. **THIS COURT ORDERS AND DECLARES** that each Settlement Class Member in the Ontario Actions who is resident in any province or territory where the release of one tortfeasor is a release of all tortfeasors covenants and undertakes not to make any claim in any way nor to threaten, commence, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.
14. **THIS COURT ORDERS** that all claims for contribution, indemnity or other claims over, whether asserted, unasserted or asserted in a representative capacity, inclusive of interest, taxes and costs, relating to the Released Claims, which were or could have been brought in the Proceedings or otherwise, by any Non-Settling Defendant, any named or unnamed co-conspirators who are not Releasees or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, or any named or unnamed co-conspirators who are not Releasees, are barred, prohibited and enjoined in

accordance with the terms of this Order (unless such claim is made in respect of a claim by a Person who has validly opted-out of this action).

15. **THIS COURT ORDERS** that if, in the absence of paragraph 14 above, the Court determines that there is a right of contribution and indemnity or other claim over, whether in equity or in law, by statute or otherwise:

(a) the Ontario Plaintiffs and the Ontario Settlement Class Members shall not be entitled to claim or recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees that portion of any damages (including punitive damages, if any), restitutionary award, disgorgement of profits, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that corresponds to the Proportionate Liability of the Releasees proven at trial or otherwise;

(b) the Ontario Plaintiffs and the Ontario Settlement Class Members shall limit their claims against the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees, and shall be entitled to recover from the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees, only those claims for damages, costs and interest attributable to the aggregate of the several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees to the Ontario Plaintiffs and the Ontario Settlement Class Members, if any, and, for greater certainty, the

Ontario Settlement Class Members shall be entitled to claim and recover on a joint and several basis as between the Non-Settling Defendants and/or named or unnamed co-conspirators who are not Releasees, to the extent provided by law;

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Ontario Actions, whether or not the Releasees remain in this action or appear at the trial or other disposition, and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Ontario Actions and any determination by this Court in respect of the Proportionate Liability of the Releasees shall only apply in the Ontario Actions and shall not be binding on the Releasees in any other proceedings.

16. **THIS COURT ORDERS** that if, in the absence of paragraph 14 hereof, the Non-Settling Defendants would not have the right to make claims for contribution and indemnity or other claims over, whether in equity or in law, by statute or otherwise, from or against the Releasees, then nothing in this Order is intended to or shall limit, restrict or affect any arguments which the Non-Settling Defendants may make regarding the reduction of any assessment of damages, restitutionary award, disgorgement of profits or judgment against them in the Ontario Actions.

17. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Settling Defendants remained parties to the Proceedings and on at

least ten (10) days' notice to Counsel for the Settling Defendants, and not to be brought unless and until the action against the Non-Settling Defendants has been certified and all appeals or times to appeal have been exhausted, seek orders for the following:

- (a) documentary discovery and a list of documents in accordance with the Rules of Civil Procedure from the Settling Defendants;
- (b) oral discovery of a representative of the Settling Defendants;
- (c) leave to serve a request to admit on the Settling Defendants in respect of factual matters; and/or
- (d) the production of a representative of the Settling Defendants to testify at trial.

18. **THIS COURT ORDERS** that the Settling Defendants retain all rights to oppose such motion(s) brought under paragraph 17. Moreover, nothing herein restricts the Settling Defendants from seeking a protective order to maintain confidentiality and protection of proprietary information in respect of documents to be produced and/or for information obtained from discovery in accordance with paragraph 17. Notwithstanding any provision in this Order, on any motion brought pursuant to paragraph 17, the Court may make such orders as to costs and other terms as it considers appropriate.

19. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 17 above on the Settling Defendants by service on Counsel for the Settling Defendants in the Ontario Actions.

20. **THIS COURT ORDERS** that for purposes of administration of this Order, this Court will retain an ongoing supervisory role and the Settling Defendants acknowledge the jurisdiction of this Court solely for the purpose of implementing, administering and enforcing the Settlement Agreement, and subject to the terms and conditions set out in the Settlement Agreement.
21. **THIS COURT ORDERS** that except as provided herein, this Order does not affect any claims or causes of action that any Ontario Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators who are not Releasees in the Ontario Actions.
22. **THIS COURT ORDERS** that no Releasees shall have any responsibility or liability whatsoever relating to:
- (a) the administration of the Settlement Agreement;
 - (b) the administration, investment, or distribution of the Trust Account; or
 - (c) the Distribution Protocol.
23. **THIS COURT ORDERS** that after the Settlement Amount is paid by the Settling Defendants to BC Counsel and until the Effective Date, BC Counsel shall hold the Settlement Amount, plus any accrued interest, in trust for the benefit of the Settlement

Classes and the Settling Defendants, and make only such payments therefrom as are provided for in the Settlement Agreement.

24. **THIS COURT ORDERS** that approval of the Settlement Agreement is contingent upon approval by the British Columbia Court and the Quebec Court, and the terms of this Order shall not be effective unless and until the Settlement Agreement is approved and the British Columbia Action has been dismissed with prejudice and without costs as against the Settling Defendants by the British Columbia Court and the Quebec Action has been settled without costs and without reservation as against the Settling Defendants. If such orders are not secured in British Columbia and Quebec, at the option of the Settling Defendants and in their sole discretion, this Order shall be null and void and without prejudice to the rights of the parties to proceed with this action and any agreement between the parties incorporated in this Order shall be deemed in any subsequent proceedings to have been made without prejudice.

25. **THIS COURT ORDERS** that this Order shall be declared null and void on subsequent motion made on notice in the event that the Settlement Agreement is terminated in accordance with its terms.

26. **THIS COURT ORDERS** that the Ontario Actions be and are hereby dismissed against the Settling Defendants and Infineon Technologies Corporation without costs and with prejudice, in accordance with the Settlement Agreement.

Date:

THE HONOURABLE JUSTICE PERELL

SUPERIOR COURT

CANADA
PROVINCE OF QUEBEC
DISTRICT OF MONTRÉAL

N°: 500-06-000251-047

DATE:

THE HONOURABLE PIERRE-C. GAGNON, J.S.C.

OPTION CONSOMMATEURS
REPRESENTATIVE/PLAINTIFF

-ET-

CLAUDETTE CLOUTIER
DESIGNATED PERSON

C.

INFINEON TECHNOLOGIES AG
INFINEON TECHNOLOGIES NORTH AMERICA CORPORATION

DEFENDANTS

-ET-

FONDS D'AIDE AUX RECOURS COLLECTIFS
MISE EN CAUSE

JUDGMENT APPROVING THE INFINEON TRANSACTION

[1] **WHEREAS** the Parties are involved in class action proceedings.

[2] **CONSIDERING** the judgment rendered in the present case on ●, 2014 by which the Court:

- Authorized the exercise of a class action against Infineon Technologies AG and Infineon Technologies North America Corporation ("**Infineon**") for settlement purposes only;
- Identified the principal question to be treated collectively;
- Approved the content and ordered the publication of a notice of hearing;

- [3] **CONSIDERING** that the proper notices were published in timely a fashion, in French and in English;
- [4] **CONSIDERING** the Motion before the Court;
- [5] **CONSIDERING** the exhibits in the file, notably the agreement entered into on ● between the Representative/Plaintiff and Infineon (the “**Infineon Transaction**”);
- [6] **CONSIDERING** the submissions of counsel for the parties and the representations made on all sides during the hearing of ●, 2014;
- [7] **CONSIDERING** Articles 1025, 1045 and 1046 of the *Code of Civil Procedure*;
- [8] **CONSIDERING THAT**, after review, it is appropriate to grant the Motion of the Representative/Plaintiff in respect of the Infineon Transaction;

FOR THESE REASONS, THE COURT:

- [9] **DECLARES** that the definitions set forth in the Infineon Transaction apply to and are incorporated into this Judgment and, as a consequence, shall form an integral part hereof, it being understood that the said definitions are binding on the parties to the Infineon Transaction, and that the Non-Settling Defendants are in no way bound by those definitions except for the purposes of this Judgment;
- [10] **DECLARES** that, subject to all other provisions of the present Judgment, the Infineon Transaction is valid, fair, reasonable and in the best interest of the Settlement Class Members in the Quebec Action, and constitutes a transaction within the meaning of Article 2631 of the *Civil Code of Quebec*, binding all parties and all members described therein;
- [11] **APPROVES** the Infineon Transaction in conformity with Article 1025 of the *Code of Civil Procedure* and **DECLARES** that it shall be implemented in accordance with its terms, subject to the terms of this Judgment;
- [12] **DECLARES** that, subject to all other provisions of this Judgment, the Infineon Transaction, in its entirety (including the preamble, definitions, schedules and addendum), is attached to this Judgment as Schedule “A” and shall form an integral part hereof and shall be binding on all Parties;
- [13] **DECLARES** that, in the event of a conflict or discrepancy between the terms of the present Judgment and those of the Infineon Transaction, the terms of the present Judgment shall prevail;
- [14] **ORDERS AND DECLARES** that, upon the Effective Date, the Releasors forever and absolutely release the Releasees from the Released Claims that any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have;

- [15] **ORDERS AND DECLARES** that this Judgment, including the Infineon Transaction, shall be binding on every Settlement Class Member in the Quebec Action who has not validly opted-out of the Quebec Action;
- [16] **DECLARES** that, by the Infineon Transaction, the Representative/Plaintiff and the Settlement Class Members in the Quebec Action expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Releasees;
- [17] **DECLARES** that the Representative/Plaintiff and the Settlement Class Members in the Quebec Action shall henceforth only be entitled to claim and recover damages, including punitive damages, interests and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) attributable to the conduct of the Non-Settling Defendants, the sales by the Non-Settling Defendants, and/or other applicable measure of proportionate liability of the Non-Settling Defendants;
- [18] **DECLARES** that any claims in warranty or other claim or joinder of parties to obtain any contribution or indemnity from the Releasees or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Action;
- [19] **DECLARES** that the ability of the Non-Settling Defendants to seek discovery from the Settling Defendants shall be determined according to the provisions of the *Code of Civil Procedure*, and the Settling Defendants shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure*;
- [20] **DECLARES** that the Non-Settling Defendants may validly serve the proceedings referred to in the preceding paragraph relating to the Settling Defendants by serving such proceeding on the Settling Defendants' *ad litem* counsel, as identified in this Judgment;
- [21] **ORDERS** the Settling Defendants to pay the Settlement Amount to BC Counsel to be held in the Trust Account in accordance with the terms of the Infineon Transaction as follows:
- (e) \$4,500,000 within 30 days of the Date of Execution; and
 - (f) an additional \$4,500,000 on or before January 15, 2015;
- [22] **ORDERS** that after such payment, BC Counsel shall hold the Settlement Amount, plus any accrued interest, in the Trust Account for the benefit of the Settlement Class;
- [23] **DECLARES** that, once the Settling Defendants have paid the Settlement Amount to BC Counsel, the Settling Defendants shall have no responsibility or liability relating to the administration, investment or distribution of the Trust Account;

- [24] **DECLARES** that this Court retains an ongoing supervisory role for the purposes of executing this Judgment;
- [25] **DECLARES** that the Quebec Action is hereby settled, without costs and without reservation as against the Settling Defendants;
- [26] **ORDERS** that this Judgment is contingent upon the approval of the Infineon Transaction by the Ontario Court and the B.C. Court and this Judgment shall not be effective unless and until the Infineon Transaction is approved by the Ontario Court and the B.C. Court;
- [27] **THE WHOLE** without costs and without reservations.

Pierre-C. Gagnon, J.S.C.