

**CANADIAN DRAM CLASS ACTIONS  
NATIONAL SETTLEMENT AGREEMENT**

Made as of November 15, 2011

Between

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

(the “Plaintiffs”)

and

**ELPIDA MEMORY, INC. and  
ELPIDA MEMORY (USA) INC.**

(the “Elpida Defendants”)

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**RECITALS**

A. WHEREAS the Plaintiffs have commenced the Proceedings in British Columbia, Ontario and Quebec which allege that the Defendants, including the Elpida 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 Products in Canada, contrary to Part VI of the *Competition Act* and common law;

B. AND WHEREAS the B.C. Proceeding was certified as a class proceedings under the B.C. *Class Proceedings Act* pursuant to the B.C. Certification Order issued by the British Columbia Court of Appeal and entered on April 12, 2010, and whereas the Elpida Defendants have appeared and delivered a defence in respect of the B.C. Proceeding;

C. AND WHEREAS the Quebec Proceeding was dismissed for lack of jurisdiction over the Defendants following a judgment of the Quebec Court dated June 17, 2008, and whereas the Quebec Plaintiff has appealed this decision to the Quebec Court of Appeal;

D. AND WHEREAS the Quebec Proceeding was not authorized as a class proceeding under the Quebec *Code of Civil Procedure* following a judgment of the Quebec Court dated June 17, 2008, and whereas the Quebec Plaintiff has further appealed this decision to the Quebec Court of Appeal;

E. AND WHEREAS the Quebec Plaintiff argued its appeals in respect of the Quebec Proceeding before the Quebec Court of Appeal on August 31, 2010, and the Quebec Court of Appeal has reserved and continues to reserve judgment in respect of the Quebec Plaintiff's appeals;

F. AND WHEREAS the Ontario Proceeding has not yet proceeded to a certification motion, and whereas the Elpida Defendants have not appeared in respect of the Ontario Proceeding;

G. AND WHEREAS the Elpida Defendants expressly deny and do not admit, through the execution of this Settlement Agreement, the allegations of wrongful conduct in the Proceedings;

H. AND WHEREAS the Elpida Defendants expressly deny and do not admit, through the execution of this Settlement Agreement, any liability to the Plaintiffs or to the classes that they represent or seek to represent in the Proceedings;

I. AND WHEREAS the Elpida Defendants assert that they do not conduct business in Canada and whereas they have specifically reserved their rights to contest the jurisdiction of the Courts in Ontario, Quebec and other courts in Canada (except for British Columbia) in respect of the claims and allegations in the Proceedings;

J. AND WHEREAS the Elpida Defendants assert that they would actively pursue and vindicate their defences in respect of certification/authorization, jurisdiction and the merits during the course of certification or authorization of a class proceeding, during the course of discovery and at trial if the Plaintiffs continued the Proceedings against them in the respective Courts;

K. AND WHEREAS, despite their belief that they are not liable in respect of the claims as alleged in the Proceedings and have good and reasonable defences in respect of certification/authorization, jurisdiction and the merits, the Elpida Defendants have negotiated and entered into this Settlement Agreement to avoid the further expense, inconvenience, and burden of this litigation and any other present or future litigation arising out of the facts that gave rise to this litigation and to achieve final resolutions of all claims asserted or which could have been asserted against them by the Plaintiffs on their own behalf and on behalf of the classes they seek to represent, and to avoid the risks inherent in uncertain, complex and protracted litigation, and thereby to put to rest this controversy involving the Elpida Defendants;

L. AND WHEREAS counsel for the Elpida 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. AND WHEREAS as a result of these settlement discussions and negotiations, the Elpida Defendants and the Plaintiffs have entered into this Settlement Agreement, which embodies all of the terms and conditions of the settlement between the Elpida Defendants and the Plaintiffs, both individually and on behalf of the Settlement Classes, subject to approval of the Courts;

N. AND 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, and having regard to the Settlement Amount, the value of cooperation to be provided by the Elpida Defendants, the value of future settlement protection for the benefit of the Elpida Defendants, the burdens and expense in prosecuting the Proceedings, including the risks and uncertainties associated with trials and appeals, 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 or seek to represent;

O. AND WHEREAS the Plaintiffs have agreed to accept this settlement, in part, because of the value of the Settlement Amount to be paid by the Elpida Defendants under this Settlement Agreement and the value of the cooperation of the Elpida Defendants have made and agree to render or make available to the Plaintiffs and/or Class Counsel as the "first-in" settling defendant at an early stage of these Proceedings pursuant to this Settlement Agreement, as well as the attendant risks of litigation in light of the potential defences that may be asserted by the Elpida Defendants;

P. AND WHEREAS the Elpida 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 and the classes that they represent or seek to represent in the Proceedings, and to avoid further expense, inconvenience and the distraction of burdensome and protracted litigation;

Q. AND WHEREAS the Parties therefore wish to, and hereby do, finally resolve on a national basis, without any admission of liability, all of the Proceedings as against the Elpida Defendants;

R. AND WHEREAS the Parties seek to certify and authorize the Proceedings as class proceedings for the purposes of implementing this Settlement Agreement in a coordinated and consistent manner across Canada;

S. AND WHEREAS while the B.C. Proceeding was previously certified as a class proceeding under the B.C. *Class Proceedings Act* on a contested basis and while the Quebec Proceeding was not authorized as a class proceeding under the Quebec *Code of Civil Procedure*

subject to a pending appeal, the Parties now consent to certification or authorization of the Ontario Proceeding and Quebec Proceeding as class proceedings 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 B.C. Plaintiffs as against the Non-Settling Defendants under the B.C. Certification 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;

T. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Elpida Defendants are prepared to submit to the jurisdiction of the Ontario Court and the Quebec Court for the sole purpose of approving, implementing, administering and enforcing this Settlement Agreement, and the Parties acknowledge and confirm that the Elpida Defendants are not attorning to the Ontario Court, the Quebec Court or any other court in Canada (except for the B.C. Court for the purpose of the B.C. Proceeding) for any other purpose or proceeding and that the Elpida Defendants otherwise reserve all of their other existing jurisdictional rights;

U. AND WHEREAS for the purposes of settlement only and contingent on approvals by the Courts as provided for in this Settlement Agreement, the Plaintiffs have consented to a dismissal of the Proceedings as against the Elpida Defendants in the B.C. Court and the Ontario Court and a settlement of the Proceedings as against the Elpida Defendants in the Quebec Court;

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

W. AND WHEREAS the Plaintiffs, Class Counsel and the Elpida 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 Elpida Defendants or evidence of the truth of any of the Plaintiffs' allegations against the Elpida Defendants, which the Elpida Defendants expressly deny;



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

## **SECTION 1 – DEFINITIONS**

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

- (1) ***Administration Expenses*** mean 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, the Escrow Agent, the Opt Out Administrator, the opt out process and claims administration but excluding Class Counsel Fees and any costs for notice in respect of the B.C. Certification Order.
- (2) ***Approval Hearings*** mean the hearings to approve the motions brought by Class Counsel for the Courts' approval of the settlement provided for in this Settlement Agreement.
- (3) ***B.C. Class Proceedings Act*** means the *Class Proceedings Act*, R.S.B.C. 1996, c. 50.
- (4) ***B.C. 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 B.C. Proceedings under the B.C. *Class Proceedings Act*.
- (5) ***B.C. Class Counsel*** means Camp Fiorante Matthews.
- (6) ***B.C. Court*** means the British Columbia Supreme Court.
- (7) ***B.C. Plaintiff*** means Pro-Sys Consultants Ltd.

- (8) ***B.C. Proceeding*** means the proceeding commenced by Pro-Sys Consultants Ltd. in the form of a Consolidated Statement of Claim filed in the British Columbia Supreme Court (Vancouver Registry), Court File No. L043141, filed on December 19, 2006.
- (9) ***B.C. Settlement Class*** and ***B.C. Settlement Class Members*** mean: all Persons resident in British Columbia at the time of purchase and/or at the time of notice who purchased DRAM Products during the Settlement Class Period, except Excluded Persons.
- (10) ***Canadian DRAM Class Actions National Settlement*** means the settlement contemplated by this Settlement Agreement.
- (11) ***Claims Administrator*** means the Person proposed by Class Counsel and appointed by the Courts to administer the Settlement Agreement, including the claims process, in accordance with the provisions of this Settlement Agreement and the Distribution Protocol, and any employees of such Person.
- (12) ***Class Counsel*** means B.C. Class Counsel, Quebec Class Counsel and Ontario Class Counsel who act as class counsel in the Proceedings.
- (13) ***Class Counsel Fees*** include the fees, disbursements, costs, interest, HST and/or GST, and other applicable taxes or charges of Class Counsel.
- (14) ***Common Issue*** in each Proceeding means: Did the Elpida Defendant(s), or any of them, conspire to harm the Settlement Class Members during the Settlement Class Period? If so, what damages, if any, are payable by the Elpida Defendants, or any of them to the Settlement Class Members?
- (15) ***Confidential Future Settlement Protection Agreement*** means the confidential agreement which sets out the Confidential Future Settlement Protection Deadline and the Confidential Future Settlement Protection Threshold.
- (16) ***Confidential Future Settlement Protection Threshold*** means a threshold in respect of the Future Settlement Refund as agreed upon by the Plaintiffs and the Elpida Defendants in a separate document delivered to the Courts under seal and kept confidential by the Parties and the Courts.

- (17) ***Confidential Future Settlement Protection Deadline*** means a deadline in respect of the Future Settlement Refund as agreed upon by the Plaintiffs and the Elpida Defendants in a separate document delivered to the Courts under seal and kept confidential by the Parties and the Courts.
- (18) ***Confidential Opt Out Agreement*** means the confidential agreement which sets out the Confidential Opt-Out Threshold.
- (19) ***Confidential Opt Out Threshold*** means a threshold in respect of Opt Outs as agreed upon by the Plaintiffs and the Elpida Defendants in a separate document delivered to the Courts under seal and kept confidential by the Parties and the Courts.
- (20) ***Confidentiality Order*** means any order with respect to confidentiality or the sealing of information that is issued by the B.C. Court, the Ontario Court and/or the Quebec Court, and any amendments thereto, and any other confidentiality order and undertaking relating to the Proceedings or the Ontario Additional Proceeding.
- (21) ***Courts*** mean the Ontario Court, the Quebec Court and the B.C. Court.
- (22) ***Defendants*** mean the individuals and entities named as defendants in the Proceedings as set out in Schedule “A”, as well as any named or unnamed co-conspirator who may be added as a defendant in the Proceedings in the future.
- (23) ***Distribution Protocol*** means the plan developed by Class Counsel for holding or distributing the Settlement Amount and accrued interest, in whole or part, for or to Settlement Class Members, as approved by the Courts which may, if directed by the Courts, require the Settlement Amount to be held in trust until the resolution of the Proceedings, in whole or in part.
- (24) ***Documents*** means “document” or “documents” under the British Columbia *Supreme Court Civil Rules*.
- (25) ***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”), Rambus dynamic random

access memory (“RDRAM”), asynchronous dynamic random access memory (“ASYNC”), double data rate dynamic random access memory (“DDR”), including modules containing DRAM, EDO DRAM, FPM DRAM, RDRAM, SDRAM, ASYNC and/or DDR. For greater certainty, DRAM does not include SRAM.

- (26) **DRAM Products** means DRAM and products that contain DRAM. For greater certainty, DRAM Products does not include products that contain SRAM and that do not contain any DRAM.
- (27) **Effective Date** means the date when the Final Orders have been received from all the Courts approving this Settlement Agreement.
- (28) **Elpida Defendants** means Elpida Memory, Inc. and Elpida Memory (USA) Inc.
- (29) **Escrow Agent** means the Person agreed to by the Elpida Defendants and Class Counsel to hold and administer the Trust Account.
- (30) **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, any judge of a Court who has heard or will hear any motion or application in respect of the Proceedings and his or her immediate family, and any Person who has fully and finally settled or extinguished their actual or potential claims as against the Defendants in respect of DRAM Products as part of the U.S. Settlement or otherwise in respect of the U.S. Proceedings.
- (31) **Final Order** means a final order, judgment or equivalent decree entered by a Court in respect of the certification or authorization of a Proceeding as a class proceeding for the purposes of this settlement and/or the approval of this Settlement Agreement and implementing it in accordance with its terms, once the time to appeal such order has expired without any appeal being taken, if an appeal lies, or once there has been affirmation of the order, judgment or equivalent decree upon a final disposition of all appeals.

- (32) ***Future Settlement*** means a written or verbal agreement entered into between the Plaintiffs and one or more Future Settling Defendants to settle and/or resolve one or more of the Proceedings or any related action, including without limitation, an agreement in principle, a term sheet, or a memorandum of understanding that is subject to certain terms and/or conditions, that is subject to the negotiation of a formal or definitive settlement agreement and/or that remains subject to court approval.
- (33) ***Future Settlement Refund*** means in the event that the Elpida Defendants claim a refund arising from the fact that the Plaintiffs or Class Counsel enter into a Future Settlement with a Future Settling Defendant, the refund that is payable to the Elpida Defendants pursuant to section 6 of this Settlement Agreement.
- (34) ***Future Settling Defendant*** means one or more of the Non-Settling Defendants.
- (35) ***Hitachi Entities*** mean, jointly and severally, individually and collectively, Hitachi Ltd. and all of its respective present 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 Releasees.
- (36) ***Imputed Elpida Settlement Amount*** means the total imputed amount of the settlement in this Settlement Agreement in favour of the Elpida Defendants, after including the Settlement Amount and any additional amounts of interest, costs, notice costs, administration costs and other applicable items that are included in this Settlement Agreement, and after including and reflecting any proportional adjustments to account for any differences between the nature and scope of the Future Settlement and the nature and scope of the settlement in this Settlement Agreement, including without limitation any differences in class definition, class period, product definition, sales covered, jurisdictions covered, proceedings covered and other applicable factors.

- (37) ***Imputed Future Settling Defendant Settlement Amount*** means the total imputed amount of a Future Settlement, after including the settlement amount and any additional amounts of interest, costs, notice costs, administration costs and other applicable items included in the Future Settlement, and after including and reflecting any proportional adjustments to account for any differences between the nature and scope of the Future Settlement and the nature and scope of the settlement in this Settlement Agreement, including without limitation any differences in class definition, class period, product definition, sales covered, jurisdictions covered, proceedings covered and other applicable factors.
- (38) ***Imputed Recovery*** means the distribution that would have been paid to any Opt Out under this Settlement Agreement and pursuant to the Distribution Protocol, if such Opt Out had not validly opted out of the Proceedings and had otherwise qualified as a Settlement Class Member.
- (39) ***NEC Entities*** mean, jointly and severally, individually and collectively, NEC Corporation and all of its respective present 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 Releasees.
- (40) ***Non-Settling Defendant*** means a Defendant in the Proceedings that is not an Elpida Defendant.
- (41) ***Notice of Certification and Approval Hearings*** means the form or forms of notice, agreed to by the Plaintiffs and the Elpida Defendants, or such other form or forms as may be approved by the Courts, which informs the Settlement Classes of: (i) the certification or authorization of the Proceedings; (ii) the dates and locations of the Approval Hearings; (iii) the principal elements of this Settlement Agreement; (iv) the process by which they may opt out of the Proceedings; and (v) the Opt Out Deadline.

- (42) ***Notice of Settlement Approval and Claims Procedure*** means the form or forms of notice, agreed to by the Plaintiffs and the Elpida Defendants, or such other form or forms as may be approved by the Courts, which informs the Settlement Classes of: (i) the approval of this Settlement Agreement; and (ii) the process by which Settlement Class Members may apply to obtain compensation from the Settlement Amount.
- (43) ***Notices*** mean the Notice of Certification and Approval Hearings, the Notice of Settlement Approval and Claims Procedure, and notice of termination.
- (44) ***Ontario Class Proceedings Act*** means the *Class Proceedings Act, 1992*, S.O. 1996, c. 6.
- (45) ***Ontario Class Counsel*** means Sutts, Strosberg LLP and Harrison Pensa LLP.
- (46) ***Ontario Court*** means the Ontario Superior Court of Justice.
- (47) ***Ontario Proceeding*** means the proceeding commenced by Khalid Eidoo and Cygnus Electronics Corporation by Statement of Claim filed in the Ontario Superior Court (Toronto registry), Court File No. 05-CV-4340, filed on February 3, 2005.
- (48) ***Ontario Additional Proceeding*** means the proceeding commenced by Khalid Eidoo and Cygnus Electronics Corporation by Statement of Claim filed in the Ontario Superior Court (Toronto registry), and in the Ontario Superior Court (Toronto registry), Court File No. 10-CV-15178 (Toronto), filed on August 20, 2010.
- (49) ***Ontario Settlement Class*** and ***Ontario Settlement Class Members*** mean: (i) all Persons resident in Canada at the time of purchase and/or at the time of notice who purchased DRAM Products during the Settlement 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 Settlement 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. Proceedings.

- (50) **Opt Out** means a member of a Settlement Class who has submitted a timely and valid written election to opt out of the Proceedings in accordance with orders of the Courts.
- (51) **Opt Out Administrator** means the Person proposed by Class Counsel and appointed by the Courts to receive the Opt Out Forms and report on the opt out process.
- (52) **Opt Out Deadline** means the date which is sixty (60) days after the date on which the Notice of Certification and Approval Hearings is first published, or such other date that has been agreed by the Parties and ordered by the Courts.
- (53) **Opt Out Form** means the form, to be mutually agreed to by the Parties after the Settlement Agreement is executed, that shall be used for the purpose of implementing the opting-out procedure set out in section 5 of this Settlement Agreement.
- (54) **Opt Out Refund** means in the event that the Elpida Defendants claim a refund arising from the fact that a Person elects to opt out of the Proceedings, the refund that is payable to the Elpida Defendants pursuant to section 5 of this Settlement Agreement.
- (55) **Other Actions** mean actions or proceedings, including the Ontario Additional Proceeding but excluding the Proceedings, relating to the Released Claims commenced by a Settlement Class Member either before or after the Effective Date.
- (56) **Party and Parties** mean the Plaintiffs, the Settlement Class Members and the Elpida Defendants.
- (57) **Person** means an individual, corporation, partnership, limited partnership, limited liability company, association, joint stock company, estate, legal representative, trust, trustee, executor, beneficiary, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity and their heirs, predecessors, successors, representatives or assignees.
- (58) **Plaintiff or Plaintiffs** mean Pro-Sys Consultants Ltd., Khalid Eidoo, Cygnus Electronics Corporation and Option Consommateurs, individually and collectively.



- (59) ***Pre-Deposit Interest*** means interest payable on the Settlement Amount at a rate per annum equal to two percent (2%), calculated monthly from and after June 1, 2011 until such time as the Settlement Amount is paid into the Trust Account.
- (60) ***Proceedings*** means the B.C. Proceeding, the Ontario Proceeding and the Quebec Proceeding.
- (61) ***Proportionate Liability*** means the proportion of any judgment that, had they not settled, a Court would have apportioned to the Elpida Defendants.
- (62) ***Purchase Price*** means the purchase price actually paid by Settlement Class Members for DRAM Products purchased during the Settlement Class Period, less any rebates, delivery or shipping charges, taxes and any other form of discounts.
- (63) ***Quebec Code of Civil Procedure*** means *Code of Civil Procedure*, R.S.Q., c. C-25.
- (64) ***Quebec Class Counsel*** means Belleau Lapointe.
- (65) ***Quebec Court*** means the Superior Court of Quebec.
- (66) ***Quebec Plaintiff*** means Option Consommateurs.
- (67) ***Quebec Proceeding*** means the proceeding commenced by Option Consommateurs in the form of a motion for authorization to institute a class proceeding (Requête pour autorisation d'exercer un recours collectif) in the Quebec Court, Court File No. 500-06-0000251-047, filed on October 5, 2004.
- (68) ***Quebec Settlement Class*** and ***Quebec Settlement Class Members*** mean: all Persons resident in Quebec at the time of purchase and/or at the time of notice who purchased DRAM Products during the Settlement 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.

(69) **Released Claims** mean 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, damages of any kind including compensatory, punitive or other damages, 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, foreseen or unforeseen, actual or contingent, and liquidated or unliquidated, in law, under statute or in equity that Releasers, or any of them, whether directly, indirectly, derivatively, or in any other capacity, ever had, now have, or hereafter can, shall, or may have, relating in any way to any conduct occurring anywhere, from the beginning of time to the date hereof, in respect of the purchase, sale, pricing, discounting, marketing, distributing of or compensation for, DRAM Products, or relating to any conduct alleged (or which could have been alleged) in the Proceedings or the Other Actions including, without limitation, any such claims which have been asserted, would have been asserted, or could have been asserted, directly or indirectly, whether in Canada or elsewhere, as a result of or in connection with an alleged conspiracy or other unlawful agreement or combination or as a result of or in connection with any other alleged unlawful horizontal or vertical anti-competitive conduct in connection with the purchase, sale, pricing, discounting, marketing or distributing of DRAM Products in Canada and including, without limitation, any claims for consequential, subsequent or follow-on harm that arises after the date hereof in respect of any agreement or conduct that occurred prior to the date hereof. For greater certainty, nothing herein shall be construed to release any claims arising from any alleged product defect, breach of contract, breach of warranty or similar claims between the Parties relating to DRAM Products.

(70) **Releasees** mean, jointly and severally, individually and collectively, the Elpida Defendants and all of their respective present 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 (subject to such particular inclusions or exclusions of individuals as may be specified in writing by the Elpida

Defendants in their sole discretion prior to the Effective Date); and the predecessors, successors, purchasers, heirs, executors, administrators and assigns of each of the foregoing, excluding always the Non-Settling Defendants, the NEC Entities and the Hitachi Entities.

- (71) **Releasors** mean, jointly and severally, individually and collectively, the Plaintiffs and the Settlement Class Members on behalf of themselves and any Person claiming by or through them as a parent, subsidiary, affiliate, predecessor, successor, shareholder, partner, director, owner of any kind, agent, employee, contractor, attorney, heir, executor, administrator, insurer, devisee, assignee or representative of any kind.
- (72) **Settlement Agreement** means this agreement, including the recitals and schedules.
- (73) **Settlement Amount** means the sum of five million and seven hundred and fifty thousand Canadian dollars (CAD \$5.75 million).
- (74) **Settlement Class or Settlement Classes** means all Persons included in the B.C. Settlement Class, the Quebec Settlement Class and the Ontario Settlement Class.
- (75) **Settlement Class Member** means a member of the Settlement Classes who does not validly opt out of the Settlement Classes in accordance with orders of the Courts.
- (76) **Settlement Class Period** means April 1, 1999 to June 30, 2002.
- (77) **Trust Account** means an interest bearing trust account at a Canadian Schedule 1 bank under the control of the Escrow Agent for the benefit of Settlement Class Members.
- (78) **U.S. Proceedings** means the proceedings filed before 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 including all class and individual actions transferred by the Judicial Panel for Multidistrict Litigation for coordination, all actions pending such transfer, all actions that may be transferred in the future and any other actions 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.

- (79) *U.S. Settlement* means the settlement of any direct purchaser actions in the U.S. Proceedings, the settlement of any indirect purchaser actions in the U.S. Proceedings and any other settlement of the U.S. Proceedings.

## **SECTION 2 - SETTLEMENT APPROVAL**

### **2.1 Best Efforts**

The Parties shall take all reasonable steps to effectuate this settlement and to secure the prompt, complete and final dismissal with prejudice of the Proceedings as against the Elpida Defendants (or a settlement of the Proceedings as against the Elpida Defendants in the Quebec Court), including cooperating in the Plaintiffs' efforts to obtain any approval or orders required from the Courts, regarding the approval or implementation of the Settlement Agreement, including orders certifying the Settlement Classes for settlement purposes and approving the form and distribution of the Notices contemplated by section 11 of this Settlement Agreement.

### **2.2 Motions Approving Notice and Seeking Certification or Authorization**

(1) At a time mutually agreed to by the Parties after the Settlement Agreement is executed, the Plaintiffs shall bring motions before the Courts for orders approving the Notice of Certification and Approval Hearings described in section 11.1 and certifying or authorizing each of the Proceedings commenced in their respective jurisdictions as a class proceeding for settlement purposes.

(2) The British Columbia, the Quebec and Ontario orders approving the Notice of Certification and Approval Hearings and certifying or authorizing the Quebec Proceeding and the Ontario Proceeding referred to in section 2.2(1) shall be in the form agreeable to the Plaintiffs and the Elpida Defendants.

### **2.3 Motions for Approval of the Settlement**

(1) As soon as practicable after the orders referred to in section 2.2(2) are granted, after the Notice of Certification and Approval Hearings has been published and upon expiration of the Opt Out Deadline, the Plaintiffs shall bring motions before the Courts for orders approving this Settlement Agreement.

(2) The British Columbia order approving this Settlement Agreement referred to in section 2.3(1) shall be in the form attached hereto as Schedule “B1” except that paragraphs 1, 15 and 17 of the British Columbia order need only be substantially in the form set out in Schedule “B1”.

(3) The Quebec and Ontario orders approving the Settlement Agreement referred to in section 2.3(1) shall be in the form attached hereto respectively in Schedule “B2” and “B3” except that paragraphs 1-7, 9, 22 and 23 of the Quebec order and 1, 19 and 21 of the Ontario order need only be substantially in the form set out respectively in Schedule “B2” and “B3”. The Quebec and Ontario orders shall mirror the substance and, where possible, the form of the British Columbia order.

(4) The provisions of section 2.3(2) and 2.3(3) of this Settlement Agreement are not intended to constrain the jurisdiction and discretion of the B.C. Court, the Ontario Court or Quebec Court in issuing an appropriate order for approval of this Settlement Agreement. Notwithstanding the foregoing, the form and content of the orders approving this Settlement Agreement set out in section 2.3(2) and 2.3(3) shall be considered a material term of this Settlement Agreement and the failure of any Court to approve the form and content of the orders contemplated herein shall give rise to a right of termination pursuant to section 14 of this Settlement Agreement.

#### **2.4 Pre-Motion Confidentiality**

Until the first of the motions required by section 2.2(1) is brought, the Parties shall keep all of the terms of this Settlement Agreement, and any information or Documents related thereto, confidential and shall not disclose them without the prior written consent of counsel for the Elpida Defendants and Class Counsel, as the case may be, 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. Once the first of the motions required by section 2.2(1) has been brought, the Parties shall otherwise remain subject to the other provision of this Settlement Agreement governing confidentiality, including without limitation sections 3.3(2), 3.3(6) and 6.4 of this Settlement Agreement as well as the provisions of the Confidential Opt Out Agreement and the Confidential Future Settlement Protection Agreement.

## **2.5 Public Disclosure and Media Statements**

The Parties shall engage in reasonable consultation with each other regarding the timing and content of their proposed statements to public or to the media, if any, in respect of this Settlement Agreement, and the Parties shall reach reasonable agreement on the timing and content of any statements to the public or to the media, if any, in respect of this Settlement Agreement.

## **2.6 Sequence of Motions**

(1) The Plaintiffs in Quebec and Ontario shall not proceed with a motion to certify or authorize the Quebec Proceeding and the Ontario Proceeding unless and until the B.C. Court approves the Notice of Certification and Approval Hearings and certifies the B.C. Proceeding for settlement purposes. The certification or authorization motions may be filed in Quebec and Ontario, but, if necessary, Quebec Class Counsel and Ontario Class Counsel will seek an adjournment of their hearings to permit the B.C. Court to render its decision in respect of the approval of the notices or the certification of the B.C. Proceeding for settlement purposes. The Elpida Defendants may agree to waive this provision.

(2) The Plaintiffs in Quebec and Ontario shall not proceed with a motion to approve this Settlement Agreement unless and until the B.C. Court approves the Settlement Agreement. The approval motions may be filed in Quebec and Ontario, but, if necessary, Quebec Class Counsel and Ontario Class Counsel will seek an adjournment of their hearings to permit the B.C. Court to render its decision on the settlement approval motion. The Elpida Defendants may agree to waive this provision.

## **SECTION 3 – SETTLEMENT BENEFITS**

### **3.1 Payment of Settlement Amount**

(1) Within thirty (30) business days of the date of execution of this Settlement Agreement, the Elpida Defendants shall pay the Settlement Amount plus Pre-Deposit Interest to the Escrow Agent for deposit into the Trust Account, in full satisfaction of the Released Claims against the Releasees.

(2) The Elpida Defendants shall have no obligation to pay any amount in addition to the Settlement Amount plus Pre-Deposit Interest, for any reason, pursuant to or in furtherance of this Settlement Agreement.

(3) The Escrow Agent shall maintain the Trust Account as provided for in this Settlement Agreement. The Escrow Agent shall not pay out all or part of the monies in the Trust Account, except in accordance with the Settlement Agreement or in accordance with an order of the Courts obtained on notice to the Elpida Defendants, and in any event, after all appeals related thereto have been disposed of.

### **3.2 Taxes and Interest**

(1) Except as hereinafter provided, all interest earned on the Settlement Amount including Pre-Deposit Interest shall accrue to the benefit of the Settlement Classes and shall become and remain part of the Trust Account.

(2) Subject to section 3.2(3), all taxes payable on any interest which accrues on the Settlement Amount and Pre-Deposit Interest in the Trust Account or otherwise in relation to the Settlement Amount shall be the responsibility of the Settlement Classes. The Escrow Agent 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 on the Settlement Amount shall be paid from the Trust Account.

(3) The Elpida 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, unless this Settlement Agreement is terminated, in which case the interest earned on the Settlement Amount in the Trust Account or otherwise shall be paid to the Elpida Defendants who, in such case, shall be responsible for the payment of all taxes on such interest not previously paid by the Escrow Agent.

### 3.3 Cooperation – Scope of Cooperation

(1) To the extent not previously provided to the Plaintiffs and subject to the limitations set forth in this Settlement Agreement, the Elpida Defendants agree to provide cooperation to Class Counsel in accordance with the requirements of this section of the Settlement Agreement.

(2) The Parties respectively acknowledge and agree that all information and Documents provided by the Elpida Defendants or their counsel to Class Counsel, the Plaintiffs and the Plaintiffs' experts under this Settlement Agreement may be used by Class Counsel, the Plaintiffs and the Plaintiffs' experts only in connection with the investigation, prosecution and settlements of the claims in the Proceedings and/or the Ontario Additional Proceeding, and shall not be used directly or indirectly for any other purpose, including the prosecution of any claim against the Releasees. The Parties further acknowledge and agree that all information and Documents provided by the Elpida Defendants or their counsel to Class Counsel, the Plaintiffs, and the Plaintiffs' experts under this Settlement Agreement shall be held and treated in strict confidence in accordance with this Settlement Agreement and any applicable Confidentiality Order, and shall not be otherwise disclosed to any person in any manner, directly or indirectly, by Class Counsel, the Plaintiffs or the Plaintiffs' experts in any way for any reason except in accordance with this Settlement Agreement and any applicable Confidentiality Order or with the express prior written consent of the Elpida Defendants or their counsel. Class Counsel, the Plaintiffs and the Plaintiffs' experts shall take all reasonable steps and precautions to ensure and maintain the confidentiality of information and Documents and any related work product of Class Counsel and the Plaintiffs' experts.

(3) The cooperation that is to be provided by the Elpida Defendants under this Settlement Agreement shall be limited to the allegations contained in the Proceedings and the Ontario Additional Proceeding, including an alleged 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 Products in Canada, contrary to Part VI of the *Competition Act* and common law.

(4) Within thirty (30) days of the Effective Date or at a time mutually agreed upon by Class Counsel and the Elpida Defendants, and subject to the other provisions of this section, the Elpida Defendants shall:



- (a) through a meeting or meetings between counsel for the Elpida Defendants and Class Counsel, to be scheduled at a reasonable time and place and for a total duration that does not exceed ten (10) hours in the aggregate, provide a verbal evidentiary proffer, which will include information originating with the Elpida Defendants and being within their possession, custody or control relating to the allegations in the Proceedings and the Ontario Additional Proceeding including, without limitation, information with respect to dates, locations, subject matter, and participants in any meetings or discussions between competitors relating to the purchase, sale, pricing, discounting, marketing or distributing of DRAM Products in Canada. The Elpida Defendants, Class Counsel and the Plaintiffs shall reach agreement in advance with respect to the participants at the proffer. The Parties agree that there shall be no audio or video recording and no written transcription or record of any statements made or information provided by counsel for the Elpida Defendants at the proffer, and that Class Counsel may only make written notes of their own thoughts and impressions at the proffer for the purpose of formulating legal advice, pursuing litigation and/or for the purpose of advancing settlement discussions in the interests of the Settlement Classes. The Parties agree that any such written notes and any other communications, information and Documents relating to the proffer are privileged, shall be kept strictly confidential and will not be used by Class Counsel for any purpose other than the investigation, prosecution and settlement of the claims in the Proceedings and the Ontario Additional Proceeding;
- (b) make reasonable efforts to provide existing electronic transactional data relating to sales of DRAM products during the Settlement Class Period by the Elpida Defendants to direct purchasers that involved a billing address or a shipping address in Canada. The Elpida Defendants represent that they are in the possession of some electronic transactional data relating to various sales of DRAM Products by the Elpida Defendants relating to Canada for part of the Settlement Class Period, which data includes Purchase Price information in respect of purchases by Settlement Class Members who purchased DRAM Products directly from the Elpida Defendants during part of the Settlement Class Period. Counsel for the Elpida Defendants agrees to be reasonably available as necessary to respond to Class Counsel's questions

regarding the set(s) of electronic transactional data produced by the Elpida Defendants. If counsel for the Elpida Defendants is unable to provide an adequate response to Class Counsel's questions, the Elpida Defendants shall direct that a current employee of the Elpida Defendants be reasonably available to Class Counsel to respond to Class Counsel's questions. The inability of the employee to respond to Class Counsel's questions or the failure of the current employee to agree to make him or herself available to or otherwise cooperate with the Plaintiffs shall not constitute a breach or violation of the Elpida Defendants' obligations under this Settlement Agreement;

- (c) produce any Documents provided by the Elpida Defendants to the Department of Justice, the Canadian Competition Bureau and class counsel for the U.S. plaintiffs as part of the settlement of the direct purchaser class proceedings in the U.S. Proceedings; and
  - (d) to the extent permissible under the protective order issued in the U.S. Proceedings, and subject to the privilege and confidentiality and other protections provided in this Settlement Agreement, the Elpida Defendants will consent to the Plaintiffs having access to all discovery evidence produced by the Elpida Defendants in the U.S. Proceedings and the Elpida Defendants shall produce any transcripts or video depositions taken in respect of the employees of the Elpida Defendants in the course of the U.S. Proceedings, but only to the extent that the Elpida Defendants are lawfully permitted to do so in accordance with copyright and other legal and contractual protections that exist in the U.S. and provided that the Plaintiffs shall bear the cost of any such production.
- (5) Subject to the rules of evidence, the other provisions of this Settlement Agreement and any Confidentiality Order, the Elpida Defendants agree to engage in reasonable efforts to make available for testimony at trial in the Proceedings and the Ontario Additional Proceeding in Canada, such current officers or employees of the Elpida Defendants as Class Counsel and the Elpida Defendants, acting reasonably, agree would be reasonably necessary to support the submission into evidence of any information or Documents produced by the Elpida Defendants in accordance with this section of this Settlement Agreement that Class Counsel and the Elpida

Defendants, acting reasonably, agree may be reasonably necessary for the prosecution of the Proceedings and/or the Ontario Additional Proceeding and may be presented to the Courts. The reasonable costs incurred by, and the reasonable expenses of, the current directors, officers or employees in relation to such cooperation shall be the responsibility of the Elpida Defendants and/or the current officers or employees. If any current officer or employee refuses to cooperate under this section, the Elpida Defendants shall use their reasonable efforts to make such person available to provide testimony or otherwise cooperate with the Plaintiffs. The failure or refusal of any current director, officer or employee to agree to make him or herself available, to provide testimony, to provide an affidavit or declaration, to attend at a cross-examination or to otherwise cooperate with the Plaintiffs shall not constitute a breach or violation of the obligations of the Elpida Defendants under this Settlement Agreement, and shall not provide any basis for the termination of this Settlement Agreement.

(6) If, in the course of the Proceedings or the Ontario Additional Proceeding, the Plaintiffs, the Settlement Class Members and/or Class Counsel, acting reasonably, conclude that it is reasonably necessary to disclose or provide information or Documents obtained from the Elpida Defendants which are not otherwise publicly available information or Documents to the Non-Settling Defendants or any affiliates of the Non-Settling Defendants, or to file such information or Documents in the Proceedings or the Ontario Additional Proceeding, and such disclosure is not otherwise prohibited by this Settlement Agreement or a Confidentiality Order, then the Plaintiffs, the Settlement Class Members and/or Class Counsel shall provide the Elpida Defendants with an advance written description of the information or Documents that is to be provided to the Non-Settling Defendants or their affiliates or filed with the Courts within a reasonable amount of time in advance of the proposed disclosure, in order that the Elpida Defendants may take steps to protect their interests in respect of such information or Documents in accordance with this Settlement Agreement and/or any Confidentiality Order. In the event that the Elpida Defendants take such steps, neither the Plaintiffs, the Settlement Class Members and/or Class Counsel shall oppose positions taken by the Elpida Defendants. For greater certainty, the rights of the Elpida Defendants under this section are in addition to and shall not derogate from any rights that the Elpida Defendants may have under any Confidentiality Order relating to the Proceedings and/or the Ontario Additional Proceeding.

(7) The Parties further respectively acknowledge and agree that the Plaintiffs, the Settlement Class Members and Class Counsel shall not, without the express prior written consent of the Elpida Defendants or their counsel, directly or indirectly, disclose any information or Documents obtained from the Elpida Defendants to any person or entity outside Canada, except in the event that a Court in Canada expressly orders such information or Documents to be disclosed. Notwithstanding the foregoing, the Plaintiffs and Class Counsel may disclose information or Documents obtained from the Elpida Defendants to U.S. class counsel appointed by the courts in the U.S. Proceedings and experts engaged by such U.S. class counsel in respect of the U.S. Proceedings, on condition that the Elpida Defendants, the Plaintiffs, Class Counsel, U.S. class counsel and such experts reach reasonable agreement in advance in respect of measures to protect and preserve the confidentiality of information or Documents obtained from the Elpida Defendants.

(8) The provisions set forth in this section 3.3 of this Settlement Agreement shall constitute the exclusive means by which the Plaintiffs, Settlement Class Members and Class Counsel may obtain discovery from the Elpida Defendants, their current and former directors, officers or employees and the Releasees, and the Plaintiffs, Settlement Class Members and Class Counsel shall pursue no other means of discovery against the Elpida Defendants, their current and former directors, officers or employees and the Releasees, whether in Canada or elsewhere and whether under the rules or laws of this or any other Canadian or foreign jurisdiction.

(9) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Elpida Defendants to disclose or produce (i) any communications, discussions or agreements between the Elpida Defendants and government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to DRAM Products that are not otherwise lawfully in the public domain, (ii) any information or Documents created for or by government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to DRAM Products that are not otherwise lawfully in the public domain and (iii) any notes, transcripts, testimony or other information or Documents relating to meetings or interviews with government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to DRAM Products that are not otherwise lawfully in the public domain, however, for greater certainty, this section shall not detract or derogate from any obligation of the Elpida Defendants under section 3.3(4)(b) and (c) to produce pre-

existing business documents that belong to the Elpida Defendants and that were created prior to and independently from any regulatory or criminal investigation relating to DRAM Products.

(10) Nothing in this Settlement Agreement shall require, or shall be construed to require, the Elpida Defendants (or any of its former officers, directors or employees) to perform any act which would violate any provincial, federal or foreign law, to disclose or produce any information or Documents prepared by or for counsel for the Elpida Defendants, or to disclose or produce any information or Documents in breach of any order, privacy law or rule, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction, or subject to solicitor-client privilege, litigation privilege, attorney-client privilege, work product doctrine, common interest privilege, joint defence privilege or any other privilege, or to disclose or produce any information or Documents the Elpida Defendants obtained on a privileged or co-operative basis from any party to any action or proceeding who is not an Elpida Defendant. If any information or Documents protected by any privilege and/or by any order, privacy law or rule, regulatory directive, regulatory policy, regulatory agreement or law of any jurisdiction are accidentally or inadvertently produced by the Elpida Defendants, the Plaintiffs and Class Counsel shall promptly return such information and/or Documents to the Elpida Defendants and such information and/or Documents shall not be disclosed or used, directly or indirectly, except with the express prior written consent of the Elpida Defendants, and the production of such information and/or Documents shall in no way be construed to constitute a waiver of privilege or protection by the Elpida Defendants in connection with such information and/or Documents.

(11) Notwithstanding their obligations to cooperate as set forth in this section 3.3 of this Settlement Agreement, if the Elpida Defendants reasonably believe that any of their applications or agreements with government authorities in Canada or elsewhere in connection with any regulatory or criminal investigations relating to DRAM Products (without admitting that any such applications or agreements exist) would be endangered by the production or disclosure of information or Documents which would otherwise be required to be produced to the Plaintiffs pursuant to the terms of this Settlement Agreement, the Elpida Defendants may withhold such information or Documents. To the extent that the Elpida Defendants withhold such information or Documents, pursuant to this section, the Elpida Defendants shall provide to Class Counsel a description of the type of information or Document to be withheld, and the basis for withholding such information. The Elpida Defendants shall work in good faith with such government

authorities to obtain permission to disclose the information or Documents being withheld. If, on the date which is eighteen (18) months from the execution of this Settlement Agreement, information or Documents continue to be withheld by the Elpida Defendants pursuant to this section, the Elpida Defendants shall forthwith provide such information or Documents to the Plaintiffs, unless any of the Courts, pursuant to motions filed by the Elpida Defendants or otherwise, orders to the contrary.

(12) A material factor influencing the Elpida Defendants' decision to execute this Settlement Agreement is their desire to limit the burden and expense of the Proceedings. Accordingly, Class Counsel and the Plaintiffs agree to exercise good faith in seeking cooperation from the Elpida Defendants, and to avoid seeking information that is unnecessary, cumulative or duplicative and agree otherwise to avoid imposing undue or unreasonable burden or expense on the Elpida Defendants.

(13) The Elpida Defendants' obligation to cooperate as particularized in this section 3.3 shall not be affected by the release provisions contained in section 7 of this Settlement Agreement. The Elpida Defendants' obligation to cooperate under this Settlement Agreement shall cease at the date of final judgment in the Proceedings against all Defendants.

## **SECTION 4 – DISTRIBUTION OF THE SETTLEMENT AMOUNT AND ACCRUED INTEREST**

### **4.1 Distribution Protocol**

After the Effective Date and on a date to be agreed by the Plaintiffs and the Elpida Defendants, at a time wholly within the discretion of Class Counsel, Class Counsel will seek orders from the Courts approving the Distribution Protocol. Subject to any amendments by the Courts, the Settlement Class Members shall be compensated pursuant to the Distribution Protocol. After the Effective Date and after the Courts have approved the Distribution Protocol, the remaining monies in the Trust Account shall be transferred by the Escrow Agent to the Claims Administrator for payment in accordance with the Distribution Protocol.

### **4.2 No Duplicative Claims**

The Distribution Protocol shall provide that to the extent that a Settlement Class Member made a purchase of DRAM Products that is covered by the U.S. Settlement and/or that was the

subject of a claim that was filed, accepted and paid by the claims administrator in the U.S. Settlement, then the Settlement Class Member shall not be entitled to seek recovery or compensation in respect of such purchases under this Settlement Agreement.

#### **4.3 No Responsibility for Administration or Fees**

The Elpida 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 5 – OPTING OUT**

#### **5.1 Procedure for Opting Out**

(1) A Person may opt out of the Proceedings by completing and signing the Opt Out Form, and by sending the Opt Out Form, by pre-paid mail, courier or fax to the Opt Out Administrator at an address and coordinates to be identified in the Notice of Certification and Approval Hearing contemplated by section 11.1 of this Settlement Agreement.

(2) A Person who wishes to opt out of the Proceedings must provide the following to the Opt Out Administrator as part of the Opt Out Form:

- (a) an executed statement requesting that the Person opting out be excluded from the Settlement Classes in the Canadian DRAM Class Actions National Settlement;
- (b) the full name, current address and telephone number of the Person who is opting out and any former names which are relevant to its purchase of DRAM Products in Canada during the Settlement Class Period;
- (c) the name(s) of each entity from whom the Person purchased DRAM Products in Canada during the Settlement Class Period; and
- (d) particulars of the Purchase Price and volume of DRAM Products purchased from each such entity during the Settlement Class Period.

(3) An election to opt out will only be effective if the Opt Out Form is postmarked on or before the Opt Out Deadline.

## 5.2 Opt Out Report

The Opt Out Administrator shall use the information provided by the Elpida Defendants pursuant to section 12.2(2) to supplement and confirm the information received pursuant to section 5.1(2) of this Settlement Agreement. Within thirty (30) days of the Opt Out Deadline, the Opt Out Administrator shall provide to the Elpida Defendants, counsel for the Elpida Defendants and Class Counsel, to the extent that such information is known by the Opt Out Administrator, the following information in respect of each Person, if any, who has opted out of the Proceedings:

- (a) the Person's full name, current address and telephone number;
- (b) the reasons for opting out, if given;
- (c) the name(s) of each entity from whom the Person purchased DRAM Products during the Settlement Class Period;
- (d) for each such entity, the Purchase Price and volume of DRAM Products purchased during the Settlement Class Period; and
- (e) a copy of all information provided in the opt out process by the Person electing to opt out.

## 5.3 Right to Terminate Based on Opt Outs

(1) The Elpida Defendants may terminate this Settlement Agreement in the event that the volume of DRAM Products purchased by Settlement Class Members who opt out of the Proceedings or the number and identity of Settlement Class Members who opt out of the Proceedings exceeds the Confidential Opt Out Threshold.

(2) To terminate this Settlement Agreement based on Opt Outs, the Elpida Defendants shall give a written notice of termination to Class Counsel no later than twenty-one (21) days after the receipt of the report contemplated by section 5.2 of this Settlement Agreement.



#### 5.4 **Alternative Right to Claim Opt Out Refund**

(1) In the event that the Elpida Defendants have a right to terminate this Settlement Agreement under section 5.3(1) of this Settlement Agreement but the Elpida Defendants elect not to exercise their right to terminate, the Elpida Defendants may alternatively claim an Opt Out Refund pursuant to this Settlement Agreement.

(2) In the event that the Elpida Defendants elect to claim an Opt Out Refund, in respect of each valid Opt Out, the Elpida Defendants shall be entitled to payment of an Opt Out Refund equal to such Opt Out's Imputed Recovery from the Settlement Amount. An Opt Out's Imputed Recovery shall be estimated as best as practicable on the basis of information that is acceptable to both Class Counsel and the Elpida Defendants, including, if available, information provided by the Opt Out.

(3) The Elpida Defendants may claim an Opt Out Refund by giving notice in writing to Class Counsel and the Claims Administrator within twenty-one (21) days of receiving notice in writing from the Claims Administrator that the distribution claims period has been initiated. The Elpida Defendants shall provide their written computation of entitlement to an Opt Out Refund in respect of each Opt Out Refund claimed together with their written notice of claim.

(4) If Class Counsel are not satisfied with the accuracy of the Opt Out Refund claimed by the Elpida Defendants, Class Counsel may, within twenty-one (21) days of receiving the notice referred to in section 5.4(3), provide the Elpida Defendants with their alternative computation of the Opt Out Refund.

(5) If the Elpida Defendants are not satisfied with the Opt Out Refund computed by Class Counsel, the Elpida Defendants may, within twenty-one (21) days of receiving the alternative computation referred to in section 5.2(4), apply to the Court(s) for a determination of the appropriate amount of the Opt Out Refund.

(6) The Claims Administrator shall pay to the Elpida Defendants the total Opt Out Refund to which the Elpida Defendants are entitled immediately prior to distribution to Settlement Class Members.

## **SECTION 6 – FUTURE SETTLEMENT PROTECTION**

### **6.1 Future Settlements**

Nothing in this Settlement Agreement shall restrict the ability of the Plaintiffs and Class Counsel, in their discretion and with a view to the best interests of the class or classes they represent, to negotiate and enter into future settlements with one or more Future Settling Defendants in respect of one or more of the Proceedings and/or the Ontario Additional Proceeding, provided however that the Elpida Defendants may be entitled to payment of a Future Settlement Refund from the monies in the Trust Account or another trust account in accordance with the requirements of this Settlement Agreement.

### **6.2 Future Settlement Refund**

(1) In the event that one or more Plaintiffs or Class Counsel enter into a Future Settlement in respect of one or more of the Proceedings, the Ontario Additional Proceeding or any other related action with one or more Future Settling Defendants before the expiration of the Confidential Future Settlement Protection Deadline on terms and/or conditions that are more favourable than those provided to the Elpida Defendants based on the Confidential Future Settlement Protection Threshold, then the Elpida Defendants shall be entitled to payment of a Future Settlement Refund and any accrued interest in accordance with this Settlement Agreement, unless there has been a material adverse change relating to the Proceedings and the Ontario Additional Proceeding such that a reasonable person would objectively conclude that the prospect or amount of an equivalent economic recovery from any Future Settling Defendant has been substantially lessened or reduced.

(2) For greater certainty and without limitation, the Plaintiffs and Class Counsel acknowledge and agree that they shall not rely on any current or future rulings or proceedings arising from the B.C. Court of Appeal's decisions released on April 15, 2011 in *Sun-Rype Products Ltd. v. Archer Daniels Midland Company* (Court of Appeal Docket #CA038308, CA038314 and CA038324) and *Pro-Sys Consultants Ltd. v. Microsoft Corporation* (Court of Appeal Docket #CA034325; CA037968), or any future decision from the Supreme Court of Canada in respect of the pending applications for leave to appeal these decisions (SCC File #34283 and SCC File #34282, respectively), or any current or future procedural, stay or case management decisions of Justice Masuhara in connection with these decisions as a material

adverse change relating to the Proceedings and the Ontario Additional Proceeding for the purpose of section 6.2(1). The Plaintiffs, Class Counsel and the Elpida Defendants otherwise respectively reserve their rights as to whether any other proceeding, decision or development constitutes a material adverse change relating to the Proceedings and the Ontario Additional Proceeding for the purpose of section 6.2(1).

(3) In the event that the Elpida Defendants are entitled to a Future Settlement Refund under this Settlement Agreement, the Future Settlement Refund shall be calculated as the amount that is the difference between: (i) the Imputed Elpida Settlement Amount and (ii) the Imputed Future Settling Defendant's Settlement Amount times the ratio between the Elpida Defendants' total sales of DRAM in North America during the applicable class period and the Future Settling Defendant's total sales of DRAM in North America during the applicable class period.

(4) The Parties shall take all reasonable steps to calculate and/or estimate the Imputed Future Settling Defendant's Settlement Amount, the Imputed Elpida Settlement Amount and the Future Settlement Refund as best as practicable in accordance with this section on the basis of information that is acceptable to both Class Counsel and the Elpida Defendants, including, if available, information that is in the possession of Class Counsel and information that has been produced or otherwise provided by the Future Settling Defendant. In addition, the Future Settlement Refund shall be calculated and/or estimated as best as practicable in accordance with this section to reflect an equivalent economic comparison of the nature and scope of the Future Settlement involving the Future Settling Defendant and the nature and scope of the settlement in this Settlement Agreement involving the Elpida Defendants.

### **6.3 Procedure for Future Settlement Refund**

(1) In the event that one or more Plaintiffs or Class Counsel enter into a Future Settlement of one or more of the Proceedings, the Ontario Additional Proceeding or any related action with a Future Settling Defendant before the expiration of the Confidential Future Settlement Protection Deadline, the Plaintiffs and Class Counsel shall, as soon as practicable, provide notice in writing to the Elpida Defendants of the existence and terms of the Future Settlement. Nothing in this section shall require the Plaintiffs or Class Counsel to breach any reasonable obligation of confidentiality that they may owe to the Future Settling Defendant in respect of such a Future Settlement, provided that the Plaintiffs and Class Counsel shall disclose and provide notice in

writing of the existence and terms of a Future Settlement to the Elpida Defendants at the earliest possible time following the expiration or termination of any such obligation of confidentiality in respect of the Future Settlement and provided that the Elpida Defendants shall not be prejudiced in their ability to claim a Future Settlement Refund as a result of the passage of time relating to any such reasonable obligation of confidentiality.

(2) Upon receiving such notice in writing from the Plaintiffs and Class Counsel, the Elpida Defendants may claim a Future Settlement Refund by giving notice in writing to Class Counsel within twenty-one (21) days of receiving such notice. The Elpida Defendants shall provide their written computation of entitlement to Future Settlement Refund together with their written notice of claim.

(3) If Class Counsel are not satisfied with the accuracy of the Future Settlement Refund claimed by the Elpida Defendants, Class Counsel may, within twenty-one (21) days of receiving the notice referred to in section 6.3(2) of this Settlement Agreement, provide the Elpida Defendants with their alternative computation of the Future Settlement Refund.

(4) If the Elpida Defendants are not satisfied with the Future Settlement Refund computed by Class Counsel, the Elpida Defendants may, within twenty-one (21) days of receiving the alternative computation referred to in section 6.3(3), apply to the Court(s) in the appropriate Proceeding(s) for a determination of the appropriate amount of the Future Settlement Refund.

(5) As soon as reasonably possible following the final determination of the Future Settlement Refund in accordance with this section, the Escrow Agent (or such other representative or agent appointed by the Plaintiffs and Class Counsel to hold or administer present or future funds collected or received from the Non-Settling Defendants or any other named or unnamed co-conspirators as part of any present or future settlement or judgment) shall pay to the Elpida Defendants the Future Settlement Refund and any accrued interest in respect of the Future Settlement Refund from the Trust Account or from any present or future amount collected or received from the Non-Settling Defendants or any other named or unnamed co-conspirators as part of any present or future settlement or judgment for the benefit of all or part of the Settlement Class. For greater certainty, the Escrow Agent (or such other representative or agent appointed by the Plaintiffs and Class Counsel) shall await the final determination of the Future Settlement Refund and shall pay any applicable Future Settlement Refund and any accrued interest to the

Elpida Defendants prior to any transfer of funds from the Trust Account to the Claims Administrator (and prior to any transfer of funds from any other trust or escrow account established in respect present or future funds collected or received from the Non-Settling Defendants or any other named or unnamed co-conspirators to any claims administrator), and prior to the distribution of any funds pertaining to this settlement or a Future Settlement to Settlement Class Members, other than the payment of interim legal fees and disbursement to Class Counsel.

(6) The Plaintiffs and/or the Elpida Defendants may, on motion with notice to each other, seek directions from the B.C. Court relating to their procedural and substantive rights under section 6 of this Settlement Agreement, and Class Counsel and the Plaintiffs agree to be bound by such directions.

#### **6.4 Confidentiality**

The Parties acknowledge and agree that the terms of the Confidential Future Settlement Protection Agreement, including without limitation the Confidential Future Settlement Protection Deadline, the Confidential Future Settlement Protection Threshold, as well as the existence, timing, duration or expiration of the Confidential Future Settlement Protection Deadline, and the existence, timing, calculation and/or payment of any Future Settlement Payment to the Elpida Defendants, shall be held and treated in strict confidence in accordance with this Settlement Agreement and shall not be otherwise disclosed to any Non-Settling Defendant or any other person in any manner, directly or indirectly, for any reason except with the express prior written consent of the Plaintiffs, Class Counsel and the Elpida Defendants. The Plaintiffs, Class Counsel and the Elpida Defendants shall respectively take all reasonable steps and precautions to ensure and maintain the confidentiality of the terms of the Confidential Future Settlement Protection Agreement and the existence, timing, calculation and payment of any Future Settlement Payment to the Elpida Defendants, including, without limitation, all reasonable steps to oppose any attempt by any person to seek production or disclosure of the Confidential Future Settlement Protection Agreement in the Proceedings or the Ontario Additional Proceeding.

#### **6.5 Material Term**

The future settlement protection that the Plaintiffs and Class Counsel have agreed to provide to the Elpida Defendants under this Settlement Agreement, including but not limited to

the terms of the Confidential Future Settlement Protection Threshold and the duration of the Confidential Future Settlement Protection Deadline, shall be considered a material term of the Settlement Agreement in favour of the Elpida Defendants and the failure of any Court to approve the future settlement protection contemplated herein shall give rise to a right of termination by the Elpida Defendants pursuant to section 14 of this Settlement Agreement. For greater certainty, and notwithstanding any other term of this Settlement Agreement, the Plaintiffs and Class Counsel shall not have any right of termination in the event that the Court fails to approve the future settlement protection contemplated herein, or if the Court approves the future protection contemplated herein in a materially modified form.

## **SECTION 7 - RELEASES AND DISMISSALS**

### **7.1 Release of Releasees**

Upon the Effective Date, and in consideration of payment of the Settlement Amount and Pre-Deposit Interest, and for other valuable consideration set forth in the Settlement Agreement, the Releasors forever and absolutely release the Releasees from the Released Claims.

### **7.2 Covenant Not To Sue**

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 not to sue and undertake not to make any claim in any way or to threaten, commence, participate in, or continue any proceeding in any jurisdiction against the Releasees in respect of or in relation to the Released Claims.

### **7.3 No Further Claims**

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 Releasees or against any other Person who may claim contribution or indemnity, or other claims over relief, from any Releasees 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 and/or the continuation of the Ontario Additional

Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.

#### **7.4 Dismissal and/or Settlement of the Proceedings**

(1) The B.C. Proceeding and the Ontario Proceeding shall be dismissed with prejudice and without costs as against the Elpida Defendants.

(2) The Quebec Proceeding shall be settled, without costs and without reservation as against the Elpida Defendants, and the Parties shall sign and file a declaration of settlement out of court with the Quebec Court.

#### **7.5 Dismissal of the Other Actions**

(1) Upon the Effective Date, all Other Actions which were commenced in Ontario, British Columbia or any other jurisdiction in Canada except Quebec by any Settlement Class Member who does not opt out shall be dismissed against the Releasees without costs and with prejudice.

(2) Upon the Effective Date, each member of the Ontario Settlement Class and the British Columbia Settlement Class who does not opt out shall be deemed to irrevocably consent to the dismissal, without costs and with prejudice, of his, her or its Other Actions against the Releasees.

(3) Each member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be deemed to irrevocably consent to the dismissal, without costs and without reservation, of his, her or its Other Actions against the Releasees.

(4) Each Other Action commenced in Quebec by a member of the Quebec Settlement Class who makes a claim under this Settlement Agreement shall be dismissed as against the Releasees, without costs and without reservation.

(5) Each Settlement Class Member who files a claim form must execute a consent to the dismissal of any Other Actions against the Releasees, without costs and with prejudice. Such consent will be obtained within the body of the claim form to be filed by a Settlement Class Member for compensation pursuant to the Distribution Protocol, in a form to be approved by the Elpida Defendants.

## **7.6 Releases and Covenants Not to Sue**

The form and content of the releases and covenants not to sue contemplated in sections 7.1, 7.2, 7.3, 7.4 and 7.5 of this Settlement Agreement shall be considered a material term of the Settlement Agreement in favour of the Elpida Defendants and the failure of any Court to approve the releases or covenants not to sue contemplated herein shall give rise to a right of termination by the Elpida Defendants pursuant to section 14 of this Settlement Agreement. For greater certainty, and notwithstanding any other term of this Settlement Agreement, the Plaintiffs and Class Counsel shall not have any right of termination in the event that any Court fails to approve the releases and/or covenants not to sue contemplated herein, or if any Court approves the releases and/or covenants not to sue contemplated herein in a materially modified form.

## **SECTION 8 - BAR ORDER, WAIVER OF SOLIDARITY ORDER AND OTHER CLAIMS**

### **8.1 British Columbia and Ontario Bar Orders**

(1) The Plaintiffs and the Elpida Defendants agree that the British Columbia and Ontario orders approving this Settlement Agreement must include a bar order in respect of the B.C. Proceeding, the Ontario Proceeding and the Ontario Additional Proceeding. The bar order shall be in a form agreed to by the Plaintiffs and the Elpida Defendants, and shall include:

- (a) a provision that all claims for contribution, indemnity or other claims over, whether asserted or 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, the Ontario Additional Proceeding or otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, are barred, prohibited and enjoined in accordance with the terms of this section (unless such claim is made in respect of a claim by an Opt Out);
- (b) a provision governing the rights of the Plaintiffs and the Settlement Class Members to assert claims against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees in respect of the Proceedings, the Ontario Additional Proceeding and otherwise, provided that under such a provision, if a



Court determines there is a right of contribution and indemnity between co-conspirators, the Plaintiffs and the 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, in respect of the Proceedings, the Ontario Additional Proceeding or otherwise, and the Court shall have full authority to determine the Proportionate Liability of the Releasees at trial or other disposition of the Proceedings or the Ontario Additional Proceeding, whether or not the Releasees appear at trial or other disposition and the Proportionate Liability of the Releasees shall be determined as if the Releasees are parties to the Proceedings and/or Ontario Additional Proceeding and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceedings and/or Ontario Additional Proceeding and shall not be binding on the Releasees in any other proceedings; and

- (c) a provision governing the ability of the Non-Settling Defendants to bring a motion to seek discovery of the Elpida Defendants for the purposes of the continuation of the Proceedings and the Ontario Additional Proceeding, provided that under such a provision, the Elpida Defendants shall retain and reserve all of their rights to oppose such a motion.

## 8.2 Quebec Waiver or Renunciation of Solidarity Order

(1) The Plaintiffs and the Elpida Defendants agree that the Quebec order approving this Settlement Agreement must include an order that provides for a waiver or renunciation of solidarity. The waiver or renunciation of solidarity order shall be in a form agreed to by the Plaintiffs and the Elpida Defendants, and shall include:

- (a) a provision that the Quebec Plaintiff and the Quebec Settlement Class Members expressly waive and renounce the benefit of solidarity against the Non-Settling Defendants with respect to the facts, deeds or other conduct of the Elpida Defendants;

- (b) a provision that the Quebec Plaintiff and the Quebec Settlement Class Members shall henceforth only be able 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;
- (c) a provision that any claims in warranty or any other claim or joinder of parties to obtain any contribution or indemnity from the Elpida Defendants or relating to the Released Claims shall be inadmissible and void in the context of the Quebec Proceeding; and
- (d) a provision that the ability of Non-Settling Defendants to seek discovery from the Elpida Defendants shall be determined according to the provisions of the *Code of Civil Procedure*, and the Elpida Defendants shall retain and reserve all of their rights to oppose such discovery under the *Code of Civil Procedure*.

### 8.3 **Material Term**

The form and content of the bar orders and the waiver or renunciation of solidarity order contemplated in sections 8.1 and 8.2 of this Settlement Agreement shall be considered a material term of the Settlement Agreement in favour of the Elpida Defendants and the failure of any Court to approve the bar orders or the waiver or renunciation of solidarity order contemplated herein shall give rise to a right of termination by the Elpida Defendants pursuant to section 14 of this Settlement Agreement. For greater certainty, and notwithstanding any other term of this Settlement Agreement, the Plaintiffs and Class Counsel shall not have any right of termination in the event that any Court fails to approve the bar order and/or waiver or renunciation of solidarity order contemplated herein, or if any Court approves the bar order and/or waiver or renunciation of solidarity order contemplated herein in a materially modified form.

## **SECTION 9 – EFFECT OF SETTLEMENT**

### **9.1 No Admission of Liability**

The Plaintiffs, Class Counsel and the Elpida Defendants expressly reserve all of their rights if this Settlement Agreement is not approved, is terminated or otherwise fails to take effect for any reason. The Plaintiffs, Class Counsel and the Elpida Defendants agree that, whether or not this Settlement Agreement is finally approved, is terminated, or otherwise fails to take effect for any reason, 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 any of the Elpida Defendants or by any Releasee, or of the truth of any of the claims or allegations contained in the Proceedings, the Other Actions or any other pleading filed by the Plaintiffs or any other Settlement Class Member.

### **9.2 Agreement Not Evidence**

The Plaintiffs, Class Counsel and the Elpida Defendants 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 present, pending or future civil, criminal or administrative action or proceeding, except in a proceeding to approve and/or enforce this Settlement Agreement, or to defend against the assertion of Released Claims, or as otherwise required by law or as provided in this Settlement Agreement.

### **9.3 No Further Litigation**

(1) No Plaintiff and no Class Counsel may directly or indirectly 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 investigation and prosecution of the Proceedings as against any Non-Settling Defendant or any named or unnamed co-conspirators who are not Releasees or the continued investigation and prosecution of the Ontario Additional Proceeding as against any Non-Settling Defendant or any named or

unnamed co-conspirators who are not Releasees. Moreover, in addition to the other protections set out in this Settlement Agreement, the Plaintiffs and Class Counsel may not divulge to anyone for any purpose any information, including, without limitation, any cooperation Documents and information provided pursuant to section 3.3, obtained in the course of the Proceedings or the negotiation and preparation of this Settlement Agreement, except to the extent such disclosure is authorized by this Settlement Agreement, such information is otherwise lawfully available in the public domain or such disclosure is otherwise ordered by a court in Canada.

(2) For greater certainty, section 9.3(1) does not apply to the involvement of any Person in the continued investigation and prosecution of the Proceedings as against any Non-Settling Defendant or any named or unnamed co-conspirators who are not Releasees or the continued investigation and prosecution of the Ontario Additional Proceeding as against any Non-Settling Defendant or any named or unnamed co-conspirators who are not Releasees.

## **SECTION 10– CERTIFICATION OR AUTHORIZATION FOR SETTLEMENT ONLY**

### **10.1 Settlement Classes and Common Issue**

(1) The Parties agree that the Ontario Proceeding and the Quebec Proceeding shall be certified or authorized as class proceedings as against the Elpida Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(2) The Parties agree that the B.C. Proceeding shall be certified in an amended form as against the Elpida Defendants solely for purposes of settlement of the Proceedings and the approval of this Settlement Agreement by the Courts.

(3) The Plaintiffs agree that, in the motions for certification or authorization of the Ontario Proceeding and the Quebec Proceeding as class proceedings and the motion to amend the certification of the B.C. Proceeding as class proceedings to implement this Settlement Agreement and for the approval of this Settlement Agreement, the only common issue that the Plaintiffs will seek to define is the Common Issue and the only classes that they will assert are the Settlement Classes. The Plaintiffs acknowledge that the Elpida Defendants agree to the definition of the Common Issue for purposes of settlement only.

(4) The Parties agree that the certification or authorization of the Ontario Proceeding and the Quebec Proceeding as against the Elpida Defendants for the purpose of implementing this Settlement Agreement, and the certification of the B.C. Proceeding in an amended form as against the Elpida 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 under the B.C. Certification Order.

## **10.2 Certification or Authorization Without Prejudice in the Event of Termination**

In the event this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Parties agree that any prior certification or authorization of a Proceeding as a class proceeding pursuant to this Settlement Agreement, or any amended certification of a Proceeding as a class proceeding pursuant to this Settlement Agreement, including the definition of the Settlement Classes and the statement of the Common Issue, shall be without prejudice to any position that any of the Parties may later take on any issue in the Proceedings, the Additional Ontario Proceeding or any other litigation.

## **SECTION 11 – NOTICE TO SETTLEMENT CLASS**

### **11.1 Notice Required**

The proposed Settlement Classes shall be given the following Notices: (i) Notice of Certification and Approval Hearings; (ii) Notice of Settlement Approval and Claims Procedure; and (iii) termination of this Settlement Agreement if it is terminated after notice provided in accordance with (i) above or as otherwise ordered by the Courts.

### **11.2 Form and Distribution of Notice**

(1) The form of the Notices referred to in section 11.1 and the manner of publication and distribution shall be as agreed to by the Plaintiffs and the Elpida Defendants or in such form or manner as approved by the Courts.

(2) The Plaintiffs and the Elpida Defendants shall engage in reasonable efforts to work with the parties to the U.S. Settlement and with the Non-Settling Defendants to the Proceedings to coordinate the form and distribution of the notice of this Settlement Agreement, the notice of the

certification of the B.C. Proceeding, and any other settlements that have or may be reached in the Proceedings or the U.S. Proceedings so that, to the extent possible, the Settlement Classes receive effective notice on a timely basis and at a reasonable cost.

### **11.3 Notice of Distribution**

Except to the extent provided for in this Settlement Agreement, the form of notice in respect to the administration of this Settlement Agreement and the Distribution Protocol shall be determined by the Courts on motions brought by Class Counsel.

## **SECTION 12 – ADMINISTRATION AND IMPLEMENTATION**

### **12.1 Mechanics of Administration**

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

### **12.2 Information and Assistance**

(1) The Elpida Defendants will make reasonable efforts to compile a list of the names and addresses of Persons in Canada who purchased DRAM Products from the Elpida Defendants in Canada during the Settlement Class Period.

(2) The information required by section 12.2(1) shall be delivered to Class Counsel within thirty (30) business days of the date of execution of this Settlement Agreement.

(3) Class Counsel may use the information provided under section 12.2(2) to advise Persons in Canada who purchased DRAM Products from the Elpida Defendants in Canada during the Settlement Class Period of this Settlement Agreement and the date of the Approval Hearings before the Courts and to evaluate any claims for an Opt Out Refund made by the Elpida Defendants.

(4) If this Settlement Agreement is terminated, all information provided by the Elpida Defendants pursuant to section 12.2(2) shall be returned or destroyed forthwith in accordance with section 14.2(1)(g), no record of the information so provided shall be retained by Class

Counsel in any form whatsoever, and the information so provided may not be used or disclosed, directly or indirectly, in any form or manner by Class Counsel or by any Person to whom Class Counsel has disclosed such information.

### **SECTION 13 – CLASS COUNSEL FEES AND ADMINISTRATION EXPENSES**

(1) The Escrow Agent shall pay the costs of the notices referred to in section 11 of this Settlement Agreement and any costs associated with receiving the written elections to opt out from the Trust Account.

(2) 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 shall determine in their sole discretion. The Elpida Defendants shall take no position with respect to Class Counsel's motion for payment of Class Counsel Fees.

(3) Except as provided in sections 13(1) and 13(2), Class Counsel Fees and Administration Expenses may only be paid out of the Trust Account after the Effective Date.

(4) The Elpida Defendants shall not be liable for any fees, disbursements or taxes, including but not limited to Class Counsel Fees and any fees, disbursements or taxes of Class Counsel's, the Plaintiffs' or the Settlement Class Members' respective lawyers, experts, advisors, agents, or representatives.

### **SECTION 14 - TERMINATION OF SETTLEMENT AGREEMENT**

#### **14.1 Right of Termination**

(1) The Plaintiffs and Class Counsel shall have the right to terminate this Settlement Agreement, in the event that:

- (a) any Court declines to certify or authorize a Settlement Class or the Settlement Classes, and the Court's order or judgment has become a Final Order;
- (b) any Court declines to approve this Settlement Agreement or any material term or part hereof, and the Court's order or judgment has become a Final Order;

- (c) any Court approves this Settlement Agreement in a materially modified form, subject to the provisions of this Settlement Agreement governing materiality, and the Court's order or judgment has become a Final Order; or
  - (d) any orders approving this Settlement Agreement made by the Ontario Court, the B.C. Court or the Quebec Court do not become Final Orders.
- (2) The Elpida Defendants shall further have the right to terminate this Settlement Agreement in the event:
- (a) any Court declines to certify or authorize a Settlement Class or the Settlement Classes, and the Court's order or judgment has become a Final Order;
  - (b) any Court declines to approve this Settlement Agreement or any material term or part hereof, and the Court's order or judgment has become a Final Order;
  - (c) any Court approves this Settlement Agreement in a materially modified form, subject to the provisions of this Settlement Agreement governing materiality, and the Court's order or judgment has become a Final Order;
  - (d) any orders approving this Settlement Agreement made by the Ontario Court, the B.C. Court or the Quebec Court do not become Final Orders;
  - (e) the form and content of any of the Final Orders approved by the B.C. Court, the Ontario Court and the Quebec Court fails to comply with sections 2.3(2) and 2.3(4) of this Settlement Agreement;
  - (f) the form and content of any of the Final Orders approved by the B.C. Court, the Ontario Court and the Quebec Court fails to comply with sections 7.1, 7.2, 7.3, 7.4, 7.5, 8.1 and 8.2 of this Settlement Agreement; or
  - (g) the Confidential Opt Out Threshold is exceeded and the Elpida Defendants provide written notice of termination in accordance with section 5.3(2) of this Settlement Agreement.



(3) For greater certainty, the Plaintiffs, Class Counsel and the Elpida Defendants acknowledge and agree that they shall not rely on any current or future rulings or proceedings arising from or in connection with the B.C. Court of Appeal's decisions released on April 15, 2011 in *Sun-Rype Products Ltd. v. Archer Daniels Midland Company* (Court of Appeal Docket #CA038308, CA038314 and CA038324) and *Pro-Sys Consultants Ltd. v. Microsoft Corporation* (Court of Appeal Docket #CA034325; CA037968) as a material adverse change for the purpose of terminating this Settlement Agreement pursuant to sections 14.1(1) and 14.1(2) or otherwise at law.

(4) To exercise a right of termination under section 14.1(1) or 14.1(2), a terminating party shall deliver a written notice of termination pursuant to section 15.18 of this Settlement Agreement. Upon delivery of such a written notice, this Settlement Agreement shall be terminated and, except as provided for in section 14.4, it 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 the Proceedings, the Additional Ontario Proceeding or any litigation.

(5) Any order, ruling or determination made by any Court that is not substantially in the form of its respective order annexed as Schedule "B1", "B2" or "B3" shall be deemed to be a material modification of this Settlement Agreement and shall provide a basis for the Elpida Defendants' termination of this Settlement Agreement, provided however that the Elpida Defendants may agree to waive this provision.

(6) Any order, ruling or determination made by any Court with respect to Class Counsel Fees 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.

#### **14.2 If Settlement Agreement is Terminated**

(1) If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Plaintiffs, Class Counsel and the Elpida Defendants agree:

- (a) no motion to certify or authorize any of the Proceedings as a class proceeding on the basis of this Settlement Agreement or to approve this Settlement Agreement, which has not been decided, shall proceed;

- (b) any order certifying or authorizing a Proceeding as a class proceeding on the basis of the Settlement Agreement or approving this Settlement Agreement shall be set aside and declared null and void and of no force or effect, and anyone shall be estopped from asserting otherwise;
- (c) any prior certification or authorization of a Proceeding as a class proceeding that has occurred after the date of this Settlement Agreement, including the definitions of the Settlement Classes and the Common Issue, and any prior procedural or substantive ruling in respect of the ongoing Proceedings and the Additional Ontario Proceeding that has occurred after the date of this Settlement Agreement, shall be without prejudice to any position that the Elpida Defendants may later take on any procedural or substantive issue in the ongoing Proceedings, the Additional Ontario Proceeding or any other litigation, subject to subsection (d);
- (d) any prior procedural or substantive step taken in respect of the ongoing Quebec Proceeding that has occurred after the date of this Settlement Agreement shall be without prejudice to any position that the Elpida Defendants may later take on any procedural or substantive issue in the Quebec Proceeding or any other litigation. In particular, in the event that the Non-Settling Defendants are successful, in whole or in part, in respect of the pending appeals by the Plaintiffs in the Quebec Proceeding before the Quebec Court of Appeal or any further appeal to the Supreme Court of Canada relating to jurisdiction and/or authorization of the Quebec Proceeding as against the Non-Settling Defendants, the Elpida Defendants shall be entitled to the full and complete benefit of the result of any such appeals and any related reasoning and orders. In the event that the Non-Settling Defendants are not successful in respect of the pending appeals by the Plaintiffs in Quebec before the Quebec Court of Appeal or any further appeal to the Supreme Court of Canada relating to jurisdiction and authorization of the Quebec Proceeding as against the Non-Settling Defendants, the Elpida Defendants shall be bound by the result of any such appeals and any related reasoning and orders, provided that the Elpida Defendants shall otherwise reserve all their rights in respect of any other procedural or substantive step taken in respect of the ongoing Quebec Proceeding after the date of this Settlement Agreement;

- (e) any appearance, attendance, filing or any other action or step taken by the Elpida Defendants pursuant to or relating to this Settlement Agreement shall be without prejudice to any position that the Elpida Defendants may later take in respect of the jurisdiction of the Courts or any other court (with the exception of the jurisdiction of the B.C. Court), including a motion by one or more of the Elpida Defendants seeking to quash service *ex juris* or to otherwise challenge the jurisdiction of the Courts or any other court over such defendant in the Proceedings, the Additional Ontario Proceeding or any other litigation;
- (f) the Parties shall negotiate in good faith to determine a new timetable, if the Proceedings are to continue against the Elpida Defendants;
- (g) within ten (10) days of such termination or failure having occurred, Class Counsel shall destroy all Documents or other information provided by the Elpida Defendants as cooperation under this Settlement Agreement, or containing or reflecting information derived from such Documents or other information, and to the extent that Class Counsel has disclosed any Documents or other information provided by the Elpida Defendants to any other person (including Plaintiffs' experts), shall recover and destroy such Documents and other information. Class Counsel shall provide the Elpida Defendants with a written certification by Class Counsel of such destruction. Nothing contained in this subsection shall be construed to require Class Counsel to destroy any of their work product; and
- (h) each Class Counsel shall forthwith deliver consents in writing to counsel for the Elpida Defendants authorizing the Elpida Defendants to bring motions before each of the Courts for orders:
  - (A) directing that the balance in the Trust Account shall be paid to the Elpida Defendants, in accordance with section 14.3 of this Settlement Agreement.
  - (B) declaring that this Settlement Agreement to be null and void and of no force or effect (except for the provisions set out in section 14.4 of this Settlement Agreement); and

- (C) setting aside any order certifying or authorizing the Proceedings as a class proceedings on the basis of this Settlement Agreement.

#### **14.3 Allocation of Monies in the Trust Account Following Termination**

If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the Escrow Agent shall return to the Elpida Defendants all monies in the Trust Account including all accrued interest, less the costs of the Escrow Agent and the Opt Out Administrator that have been incurred but not paid to date, and less the costs of the Notices that have been incurred but not paid to date, within thirty (30) business days of such termination or event having occurred.

#### **14.4 Survival of Provisions After Termination**

If this Settlement Agreement is not approved, is terminated in accordance with its terms or otherwise fails to take effect for any reason, the provisions of sections 3.3(2), 3.3(6), 6.4, 9, 10.2, 11, 12.2(4), 13(1) and 14 (and any additional provisions governing confidentiality) 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 3.3(2), 3.3(6), 6.4, 9, 10.2, 11, 12.2(4), 13(1) and 14 (and any additional provisions governing confidentiality) 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 15 - MISCELLANEOUS**

#### **15.1 Releasees Have No Liability for Administration**

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

#### **15.2 Motions for Directions**

- (1) Class Counsel or the Elpida Defendants may apply to the Courts for directions in respect of this Settlement Agreement.

(2) Class Counsel may apply to the Courts for directions in respect of the Distribution Protocol.

(3) All motions contemplated by this Settlement Agreement shall be on notice to the Plaintiffs and the Elpida Defendants, except for those motions concerned solely with the implementation and administration of the Distribution Protocol.

### 15.3 **Headings, etc.**

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.

### 15.4 **Computation of Time**

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.

### 15.5 **Ongoing Jurisdiction**

(1) Each of the Courts shall retain exclusive jurisdiction over the Proceeding commenced in its jurisdiction, the parties thereto and Class Counsel Fees in that Proceeding.

(2) No Party shall ask a Court to make any order or give a 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 relevant Court(s) with which it shares jurisdiction over that matter.

(3) Notwithstanding sections 15.5(1) and 15.5(2), the B.C. 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 an Ontario Settlement Class Member or a Quebec Settlement Class Member shall be determined by the B.C. Court.

(4) For the purposes of settlement only and contingent on the approvals by the Courts as provided for in this Settlement Agreement, the Elpida Defendants agree to submit to the jurisdiction of the Ontario Court and the Quebec Court solely for the purpose of implementing, administering and enforcing this Settlement Agreement. The Parties acknowledge and confirm that the Elpida Defendants do not attorn to the Ontario Court, the Quebec Court or any other court (excluding the B.C. Court for the purpose of the B.C. Proceeding) for any other purpose or proceeding and that the Elpida Defendants otherwise reserve all of their other existing jurisdictional rights.

(5) The Plaintiffs and the Elpida Defendants may apply to the B.C. Court for direction in respect of the implementation, administration and enforcement of this Settlement Agreement.

## 15.6 **Governing Law**

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

## 15.7 **Entire Agreement**

This Settlement Agreement, including the Confidential Future Settlement Agreement and the Confidential Opt Out 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. None of the Parties will be bound by any prior obligations, conditions or

representations with respect to the subject matter of this Settlement Agreement, unless expressly incorporated herein.

#### **15.8 Amendments**

This Settlement Agreement may not be modified or amended except in writing and on consent of all Parties hereto and any such modification or amendment must be approved by the Courts with jurisdiction over the matter to which the amendment relates.

#### **15.9 Binding Effect**

This Settlement Agreement shall be binding upon, and enure to the benefit of, the Plaintiffs, the Elpida Defendants, the Settlement Class Members, 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 Elpida Defendants shall be binding upon all of the Releasees.

#### **15.10 Counterparts**

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.

#### **15.11 Negotiated Agreement**

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.

### 15.12 **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, if required by law or by the Courts, the Elpida Defendants shall prepare a French translation of the Settlement Agreement including the Schedules at their own expense. The Parties agree that such translation is for convenience only. In the event of any dispute as to the interpretation or application of this Settlement Agreement, only the English version shall govern.

(2) The cost of translating the Notices, claims forms, Opt Out Forms or other documents referenced to or flowing from this Settlement Agreement into French and/or any other language shall, in the event such translation is required by law or by the Courts, be paid by the Elpida Defendants.

### 15.13 **Transaction**

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.

### 15.14 **Recitals**

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

### 15.15 **Schedules**

The Schedules annexed hereto form part of this Settlement Agreement.

### 15.16 **Acknowledgements**

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, beyond the terms of this Settlement Agreement, with respect to the first Party's decision to execute this Settlement Agreement.

#### 15.17 Authorized Signatures

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.

#### 15.18 Notice

Any and all notices, requests, directives, or communications required by this Settlement Agreement shall be in writing and shall, unless otherwise expressly provided herein, be given personally, by express courier, by postage prepaid mail, by facsimile transmission, or by email .pdf files, and shall be addressed as follows:

#### **For the Plaintiffs and for Class Counsel in the Proceedings:**

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

CAMP FIORANTE MATTHEWS  
4<sup>th</sup> Floor, 856 Homer St.  
Vancouver, BC V6B 2W5  
Tel: 604-689-7555  
Fax: 604-689-7554  
Email: [jjcamp@cfmlawyers.ca](mailto:jjcamp@cfmlawyers.ca)  
[rmogerman@cfmlawyers.ca](mailto:rmogerman@cfmlawyers.ca)

Harvey T. Strosberg, Q.C. and  
Heather Rumble Peterson

SUTTS, STROSBURG LLP  
600-251 Goyeau Street  
Windsor, ON N9A 6V4  
Tel: 519-258-9333  
Fax: 519-258-9527  
Email: [harvey@strosbergco.com](mailto:harvey@strosbergco.com)  
[hpeterson@strosbergco.com](mailto: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](mailto:dbelleau@belleaulapointe.com)  
[mnasr@belleaulapointe.com](mailto:mnasr@belleaulapointe.com)

David Williams and 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: [dwilliams@harrisonpensa.com](mailto:dwilliams@harrisonpensa.com)  
[jforeman@harrisonpensa.com](mailto:jforeman@harrisonpensa.com)

**For the Elpida Defendants:**

Tristram Mallett  
Christopher P. Naudie

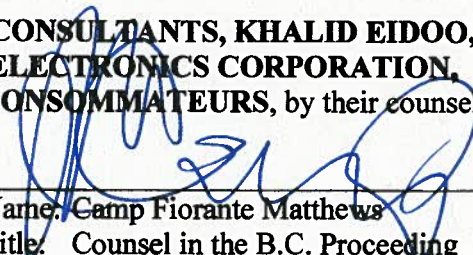
OSLER, HOSKIN & HARCOURT LLP  
P.O. Box 50  
1 First Canadian Place  
Toronto, ON M5X 1B8  
Tel: 416-862-6811  
Fax: 416-862-8666  
Email: [tmallett@osler.com](mailto:tmallett@osler.com)  
[cnaudie@osler.com](mailto:cnaudie@osler.com)

**15.19 Date of Execution**

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, by their counsel**

By:

  
Name: Camp Fiorante Matthews  
Title: Counsel in the B.C. Proceeding

By:

Name: Sutts, Strosberg LLP  
Title: Counsel in the Ontario Proceeding

By:

Name: Harrison Pensa  
Title: Counsel in the Ontario Proceeding

By:

Name: Belleau Lapointe  
Title: Counsel in the Quebec Proceeding

**ELPIDA MEMORY, INC., by its counsel**

By:

Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**ELPIDA MEMORY (USA) INC., by its counsel**

By:

Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**15.19 Date of Execution**

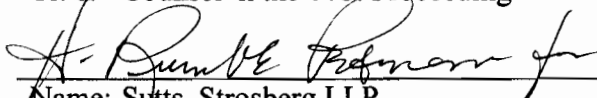
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OPTION CONSOMMATEURS, by their counsel**

By:

\_\_\_\_\_  
Name: Camp Fiorante Matthews  
Title: Counsel in the B.C. Proceeding

By:

  
\_\_\_\_\_  
Name: Sutts, Strosberg LLP  
Title: Counsel in the Ontario Proceeding

By:

\_\_\_\_\_  
Name: Harrison Pensa  
Title: Counsel in the Ontario Proceeding

By:

\_\_\_\_\_  
Name: Belleau Lapointe  
Title: Counsel in the Quebec Proceeding

**ELPIDA MEMORY, INC., by its counsel**

By:

\_\_\_\_\_  
Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**ELPIDA MEMORY (USA) INC., by its counsel**

By:

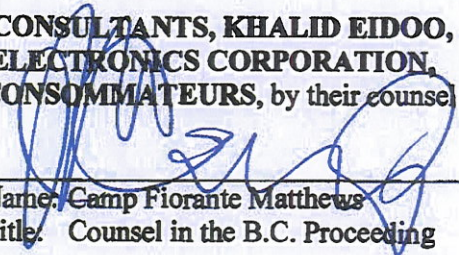
\_\_\_\_\_  
Name: Osler, Hoskin & Harcourt LLP  
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By:

  
Name: Harrison Pensa  
Title: Counsel in the Ontario Proceeding

By:

Name: Belleau Lapointe  
Title: Counsel in the Quebec Proceeding

**ELPIDA MEMORY, INC., by its counsel**

By:

Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**ELPIDA MEMORY (USA) INC., by its counsel**

By:

Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

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OPTION CONSOMMATEURS, by their counsel**

By:

\_\_\_\_\_  
Name: Camp Fiorante Matthews  
Title: Counsel in the B.C. Proceeding

By:

\_\_\_\_\_  
Name: Sutts, Strosberg LLP  
Title: Counsel in the Ontario Proceeding

By:

\_\_\_\_\_  
Name: Harrison Pensa  
Title: Counsel in the Ontario Proceeding

By:

*Belleau Lapointe conseil*  
\_\_\_\_\_  
Name: Belleau Lapointe  
Title: Counsel in the Quebec Proceeding

**ELPIDA MEMORY, INC., by its counsel**

By:

\_\_\_\_\_  
Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**ELPIDA MEMORY (USA) INC., by its counsel**

By:

\_\_\_\_\_  
Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

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CYGNUS ELECTRONICS CORPORATION,  
OPTION CONSOMMATEURS**, by their counsel

By: \_\_\_\_\_  
Name: Camp Fiorante Matthews  
Title: Counsel in the B.C. Proceeding

By: \_\_\_\_\_  
Name: Sutts, Strosberg LLP  
Title: Counsel in the Ontario Proceeding

By: \_\_\_\_\_  
Name: Harrison Pensa  
Title: Counsel in the Ontario Proceeding

By: \_\_\_\_\_  
Name: Belleau Lapointe  
Title: Counsel in the Quebec Proceeding

**ELPIDA MEMORY, INC.**, by its counsel

By: Osler, Hoskin & Harcourt LLP / per Chris Naudé  
Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**ELPIDA MEMORY (USA) INC.**, by its counsel

By: Osler, Hoskin & Harcourt LLP / per Chris Naudé  
Name: Osler, Hoskin & Harcourt LLP  
Title: Canadian Counsel

**SCHEDULE “A”**

**Proceedings**

| # | Court and File No.  | Plaintiffs’ Counsel                       | Style of Cause and Named Defendants  | Named Defendants  |
|---|---|---|--|---|
| 1 | Supreme Court of British Columbia (Vancouver Registry) (Court File No. L043141) | Camp Fiorante<br>Matthews                 | <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 Canada Inc., Micron Technology, Inc. and Micron Semiconductor Products, Inc., doing business as Crucial Technologies, Elpida Memory, Inc. and Elpida Memory (USA) Inc. |
| 2 | Ontario Superior Court of Justice (Toronto) (Court File No. 05-CV-4340)         | Siskinds,<br>Strosberg,<br>Harrison Pensa | <i>Khalid Eidoo and Cygnus Electronics Corporation v. Infineon Technologies AG, et al.</i> | 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  |



| # | Court and File No.  | Plaintiffs' Counsel | Style of Cause and Named Defendants  | Named Defendants  |
|---|---|---------------------|--|---|
|   |   |                     |  | America, Inc., Samsung Electronics Canada Inc., Micron Technology, Inc., Micron Semiconductor Products, Inc. Ola Crucial Technologies. Mosel Vitelic Corp., Mosel Vitelic Inc. and Elpida Memory, Inc.            |
| 3 | Superior Court of Québec (Montreal) (File No. 500-06-0000251-047)<br><br>Court of Appeal of Québec (File No. 500-09-018872-085) | Belleau Lapointe    | <i>Option Consommateurs and Claudette Cloutier v. Infineon Technologies AG, et al.</i> | Infineon Technologies AG, Infineon Technologies North America Corporation, Micron Technology, Inc., Hynix Semiconductor Inc., Samsung Electronics Co., Ltd., Samsung Semiconductor, Inc., and Elpida Memory, Inc. |



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 entered into between the Plaintiff and Elpida Memory Inc. and Elpida Memory (USA) Inc. (collectively, the “Elpida Defendants”) attached as Schedule “A” and dated November 15, 2011 (the “Settlement Agreement”) shall 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 B.C. Settlement Class.
3. **THIS COURT ORDERS** that the attached Settlement Agreement is approved pursuant to s. 35 of the *Class Proceedings Act*, RSBC 1996, c. 50 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 plaintiff and all B.C. Settlement Class Members who have not validly opted out of this action.
5. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each B.C. Settlement Class Member who has not validly opted out of this action 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. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, any Other Action commenced in British Columbia by any B.C. Settlement Class Member who has not validly opted out of this action shall be and is hereby dismissed against the Releasees, without costs and with prejudice.
7. **THIS COURT ORDERS AND DECLARES** that this Order, including the Settlement Agreement, is binding upon each B.C. Settlement Class Member who has not validly opted-out of this action including those persons who are minors or mentally incapable.
8. **THIS COURT ORDERS AND DECLARES** that instead of releasing the claims against the Releasees, upon the Effective Date, 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. **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 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 or the continuation of the Ontario Additional Proceeding against the Non-Settling Defendants or named or unnamed co-conspirators that are not Releasees.
10. **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, the Ontario Additional Proceeding or otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, 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. **THIS COURT ORDERS** that 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 Plaintiff and the B.C. 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, in respect of the Proceedings, the Ontario Additional Proceeding or otherwise;

- (b) for greater certainty, the Plaintiff and the BC 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, only those claims for damages, costs and interest attributable to the several liability of the Non-Settling and/or named or unnamed co-conspirators that are not Releasees to the Plaintiffs and the BC Settlement Class Members, if any; and
  - (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Proceedings or the Ontario Additional Proceeding, whether or not the Releasees 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 Proceedings and/or the Ontario Additional Proceeding and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceedings and/or the Ontario Additional Proceeding and shall not be binding on the Releasees in any other proceedings.
12. **THIS COURT ORDERS** that 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 the Proceedings or the Ontario Additional Proceeding.
13. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to this Court determined as if the Elpida Defendants remained parties to the Proceedings and on at least ten (10) days notice to counsel for the Elpida 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 *Supreme Court Civil Rules* from the Elpida Defendants;
  - (b) oral discovery of a representative of the Elpida Defendants, the transcript of which may be read in at trial;
  - (c) leave to serve a notice to admit on the Elpida Defendants in respect of factual matters; and/or
  - (d) the production of a representative of the Elpida Defendants to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
14. **THIS COURT ORDERS** that the Elpida Defendants retain all rights to oppose such motion(s) brought under 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. **THIS COURT ORDERS** that a Non-Settling Defendant may effect service of the motion(s) referred to in paragraph 13 above on the Elpida Defendants by service on counsel of record for the Elpida Defendants in this Action.
16. **THIS COURT ORDERS** that for purposes of administration of this Order, this Court will retain an ongoing supervisory role and the Elpida 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. **THIS COURT ORDERS** that, except as provided herein, this Order does not affect any claims or causes of action that any B.C. Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators who are not Releasees in this action.

18. **THIS COURT ORDERS** that the Elpida Defendants shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account.
19. **THIS COURT ORDERS** that the Settlement Amount, plus any accrued interest, be held in trust by the Escrow Agent for the benefit of the Settlement Class, pending further order of the Courts, which shall be sought by the Plaintiffs on a motion made without notice.
20. **THIS COURT DECLARES** that that 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 the Ontario Court and the Quebec Court.
21. **THIS COURT DECLARES** 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.
22. **THIS COURT ORDERS AND ADJUDGES** that, except as aforesaid, this action be and is hereby dismissed against the Elpida Defendants without costs and with prejudice.
23. **THIS COURT ORDERS** that the endorsement of this Order by counsel for the Non-Settling 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 and Reidar Mogerman

---

Signature of lawyer for the Elpida Defendants

Christopher Naudie

By the Court

---

Registrar



**SCHEDULE "B2"**

**SUPERIOR COURT**

CANADA  
PROVINCE OF QUEBEC  
DISTRICT OF MONTREAL

No.: 500-06-000251-047

DATE: 2011

---

**PRESIDED BY: THE HONOURABLE ●, J.S.C.**

---

**OPTION CONSOMMATEURS**

**Petitioner**

**and**

**CLAUDETTE CLOUTIER**

**Designated Person**

**vs.**

**INFINEON TECHNOLOGIES AG**

**and**

**INFINEON TECHNOLOGIES NORTH AMERICA CORP.**

**and**

**MICRON TECHNOLOGY, INC.**

**and**

**HYNIX SEMICONDUCTOR INC.**

**and**

**SAMSUNG ELECTRONICS CO., LTD.**

**and**

**SAMSUNG SEMICONDUCTOR INC.**

**and**

**ELPIDA MEMORY, INC.**

**Respondents**

---

## JUDGMENT

---

- [1] **WHEREAS** the Parties are involved in class action proceedings.
- [2] **CONSIDERING** the judgment rendered in the present case on ● , 2011 by which the Court:
- Authorized the exercise of a class action against the Respondent Elpida Memory, Inc. for settlement purposes only;
  - Identified the principal questions to be treated collectively;
  - Approved the content and ordered the publication of a notice of hearing (●);
- [3] **CONSIDERING** the Motion before the Court;
- [4] **CONSIDERING** the exhibits in the file, notably the agreement entered into on November 15, 2011 between, notably, the Petitioner, the Respondent Elpida Memory, Inc. (the “Elpida Respondent”) and Elpida Memory (USA) Inc. (“Elpida USA”), filed in the present proceedings as Exhibit ● (the “Elpida Transaction”);
- [5] **CONSIDERING** the submissions of the counsel for the parties and the representations made on all sides;
- [6] **CONSIDERING** Articles 1025, 1045 and 1046 of the *Code of Civil Procedure*;
- [7] **AFTER REVIEW**, it is in order to grant the Motion of the Petitioner in respect of the Elpida Respondent and the Elpida Transaction;

**FOR THESE REASONS, THE COURT:**

- [8] **GRANTS** the Petitioner’ Motion for Approval of the Elpida Transaction;
- [9] **DECLARES** that the definitions set forth in the Elpida Transaction apply to and are incorporated into this Judgment and, as a consequence, shall form an integral part thereof, being understood that the definitions are binding on the parties to the Elpida Transaction, and that the other Respondents, which are Non-Settling Defendants, are in no way bound by those definitions except for the purposes of this Judgment;
- [10] **DECLARES** that, subject to all of the other provisions of the present Judgment, the Elpida Transaction is valid, fair, reasonable and in the best interest of the Quebec Settlement Class Members, and constitute a transaction within the meaning of Article 2631 of the *Civil Code of Québec*, binding all parties and all members described thereto;

- [11] **DECLARES** that the English version of the Elpida Transaction constitutes the agreement between the parties, upon which they have consented to, and that the French version is just a translation, such that in the event of a discrepancy between the English version and the French versions, the former shall supersede the latter, subject to the terms of this Judgment;
- [12] **APPROVES** the Elpida Transaction in conformity with Article 1025 of the *Code of Civil Procedure* and **DECLARES** that it shall be implemented in accordance with its terms, but subject to the terms of this Judgment,
- [13] **DECLARES** that, subject to the other provisions of this Judgment, the Elpida Transaction, in its entirety (including the preamble, the definitions, schedules and addendum), is attached to this Judgment as Schedule “A” and shall form an integral part of this Judgment and shall be binding on all Parties;
- [14] **DECLARES** that, in the event of a conflict or discrepancy between the terms of the present Judgment and those of the Elpida Transaction, the terms of the present Judgment shall prevail;
- [15] **ORDERS AND DECLARES** that, upon the Effective Date, each Releasor has released and shall conclusively be deemed to have fully, finally, irrevocably and forever released the Releasees from the Released Claims;
- [16] **DECLARES** that any Quebec Settlement Class Member who makes a claim under the Elpida Transaction shall be deemed to have irrevocably consented to the full and final dismissal of all Other Actions he or she instituted against the Releasees, without costs and without reservation;
- [17] **ORDERS AND DECLARES** that this Judgment, including the Elpida Transaction, shall be binding on every Quebec Settlement Class Member who has not validly opted-out of the action;
- [18] **DECLARES** that, by the Elpida Transaction, the Petitioner, the Designated Person, and the Quebec Settlement Class Members expressly waive the benefit of solidarity against the Respondents that do not participate in the Elpida Transaction, with respect to the actions of the Elpida Respondent and the other Releasees;
- [19] **DECLARES** that the Petitioner, the Designated Person, and the Quebec Settlement Class Members shall from now on limit their claim towards the Respondents that are Non-Settling Defendants to the damages that were caused by them or attributable to their sales and/or conduct, including punitive damages, interest and costs (including investigative costs claimed pursuant to s. 36 of the *Competition Act*) that may be attributable to their sales and and/or conduct, and, for greater certainty, cannot claim from them any damages, either compensatory, punitive, recursive or of any other kind attributable to the sales and/or conduct of the Elpida Respondent or any of the Releasees, in any way whatsoever;
- [20] **DECLARES** that any and all claims in warranty or other third party claims to obtain contribution or indemnity from the Elpida Respondent or any of the Releasees, or relating to the Released Claims, is inadmissible and void in the context of the present class action;

- [21] **DECLARES** that the rights of the Respondents that are Non-Settling Defendants to examine the Elpida Respondent and/or any of the Releasees shall be governed by the rules of the *Code of Civil Procedure*, and the Elpida Respondent and/or the Releasees shall retain and reserve all of their respective rights to oppose such discovery under the *Code of Civil Procedure*;
- [22] **DECLARES** that the Respondents that are Non-Settling Defendants may validly serve the proceedings referred to in the preceding paragraph relating to the Elpida Respondent by serving such proceeding on the Elpida Respondent's *ad litem* counsel, as identified in this Judgment;
- [23] **DECLARES** that this Court retains an ongoing supervisory role for the purposes of executing this Judgment, and **PRAYS ACT** that the Elpida Respondent as well as Elpida USA shall acknowledge the jurisdiction of this Court solely for the purposes of implementing, administrating and enforcing the Elpida Transaction, and subject to the terms and conditions set forth in the Elpida Transaction;
- [24] **APPROVES** the Notices attached to this Judgment as Schedules "B";
- [25] **ORDERS** that Notices attached to this Judgment as Schedule "B" shall be published according to the notice dissemination plan attached to this Judgment as Schedule "C";
- [26] **DECLARES** that the present proceedings are hereby settled with respect to the Elpida Respondent, without costs;
- [27] **DECLARES** that Elpida Respondent shall have no responsibility or involvement in the administration, investment or distribution of the Trust Account;
- [28] **ORDERS** that this Judgment is contingent upon the approval by the Ontario Court and the B.C. Court and this Judgment shall have no force and effect if such approval is not secured in Ontario and British Columbia;
- [29] **THE WHOLE** without costs and without reservations.

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●, J.S.C.

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**SCHEDULE A**

See the «TRANSACTION» at the \_\_\_\_\_ following pages

**SCHEDULE B**

**See the «NOTICE» at the \_\_\_\_\_ following pages**



**SCHEDULE C**

**See the «NOTICE DISSEMINATION PLAN» at the following page**

**SCHEDULE “B3”**

Court File No. 05-CV-4340

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE )  
 )  
JUSTICE ) of , 2011  
 ) , the day

**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*

**ORDER**

**THIS MOTION** made by the Plaintiffs in the Ontario Proceeding for an Order approving the settlement agreement entered into with the Defendant Elpida Memory Inc. (the “Settling Defendant”), was heard this day at the Court House, 393 University Avenue, 10<sup>th</sup> Floor, Toronto, Ontario.

**ON READING** the materials filed, including the settlement agreement attached to this Order as Schedule “A” (the “Settlement Agreement”), and on hearing the submissions of counsel for

the Plaintiffs, counsel for the Settling Defendant and counsel for the Non-Settling Defendants in the Ontario Proceeding;

**AND ON BEING ADVISED** that (a) the Plaintiffs in the Ontario Proceeding consent to this Order; and (b) the Settling Defendant consents 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 Ontario Settlement Class.
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 Ontario Settlement Class Members who have not validly opted out of this action.
5. **THIS COURT ORDERS** that any Ontario Settlement Class Member who has validly opted out of this action is not bound by the Settlement Agreement and shall no longer participate or have the opportunity in the future to participate in this action.
6. **THIS COURT ORDERS** that any Ontario Settlement Class Member who has not validly opted out of this action is bound by the Settlement Agreement and may not opt out of this action in the future.
7. **THIS COURT ORDERS AND DECLARES** that, upon the Effective Date, each Ontario Settlement Class Member who has not validly opted out of this action 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 Ontario Settlement Class Member who has not validly opted out of this action 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 Ontario Settlement Class Member who has not validly opted out of this action 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 this action.
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 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 Defendant or unnamed co-conspirators that are not Releasees or the continuation of the Ontario Additional Proceeding against the Non-Settling Defendants 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 Ontario Settlement Class Members 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 Ontario Settlement Class Member 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, the Ontario Additional Proceeding or otherwise, by any Non-Settling Defendant or any other Person or party, against a Releasee, or by a Releasee against a Non-Settling Defendant, 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 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, in respect of the Proceedings, the Ontario Additional Proceeding or otherwise;
  
  - (b) for greater certainty, the 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 several liability of the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees to the Plaintiffs and the Ontario Settlement Class Members, if any; and

- (c) this Court shall have full authority to determine the Proportionate Liability of the Releasees at the trial or other disposition of the Proceedings or the Ontario Additional Proceeding, whether or not the Releasees 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 Proceedings and/or Ontario Additional Proceeding and any determination by the Court in respect of the Proportionate Liability of the Releasees shall only apply in the relevant Proceedings and/or the Ontario Additional Proceeding and shall not be binding on the Releasees in any other proceedings.
16. **THIS COURT ORDERS** that if, in the absence of paragraph 10 hereof, the Non-Settling Defendants and/or named or unnamed co-conspirators that are not Releasees 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 Proceedings or the Ontario Additional Proceeding.
17. **THIS COURT ORDERS** that a Non-Settling Defendant may, on motion to the Court determined as if the Settling Defendant remained a party to the Proceedings, and on at least ten (10) days notice to counsel for the Settling Defendant, 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 an affidavit of documents in accordance with the *Rules of Civil Procedure* O.Reg. 194 from the Settling Defendant;
  - (b) oral discovery of a representative of the Settling Defendant, the transcript of which may be read in at trial;
  - (c) leave to serve a request to admit on the Settling Defendant in respect of factual matters; and/or

- (d) the production of a representative of the Settling Defendant to testify at trial, with such witness to be subject to cross-examination by counsel for the Non-Settling Defendants.
18. **THIS COURT ORDERS** that the Settling Defendant retains all rights to oppose such motion(s) brought under 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 Defendant by service on counsel of record for the Settling Defendant in this Action.
20. **THIS COURT ORDERS** that for purposes of administration of this Order, this Court will retain an ongoing supervisory role and the Settling Defendant acknowledges 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 Settlement Class Member has or may have against the Non-Settling Defendants or unnamed co-conspirators who are not Releasees in this action.
22. **THIS COURT ORDERS** that the Settling Defendant shall have no responsibility or liability relating to the administration, investment, or distribution of the Trust Account.
23. **THIS COURT ORDERS** that the Settlement Amount, plus any accrued interest, be held in trust by the Escrow Agent for the benefit of the Settlement Class, pending further order of the Courts, which shall be sought by the Plaintiffs on a motion made without notice.
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 the British Columbia Court and the Quebec Court.

25. **THIS COURT DECLARES** 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 AND ADJUDGES** that, except as aforesaid, this action be and is hereby dismissed against the Settling Defendant without costs and with prejudice.

Date:

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THE HONOURABLE JUSTICE