

1 NIAL E. LYNCH (State Bar No. 157959)  
NATHANAEL M. COUSINS (State Bar No. 177944)  
2 MAY Y. LEE (State Bar No. 209366)  
BRIGID S. BIERMANN (State Bar No. 231705)  
3 Antitrust Division  
U.S. Department of Justice  
4 450 Golden Gate Avenue  
Box 36046, Room 10-0101  
5 San Francisco, CA 94102  
Telephone: (415) 436-6660

Original Filed March 22, 2006

6 Attorneys for the United States

7 UNITED STATES DISTRICT COURT  
8  
9 NORTHERN DISTRICT OF CALIFORNIA  
10  
11 SAN FRANCISCO DIVISION

11 UNITED STATES OF AMERICA )

Case No. CR 06-0059 (PJH)

12 v. )

13 ELPIDA MEMORY, INC. )

14 Defendant. )  
15

16 **PLEA AGREEMENT**

17 The United States of America and ELPIDA MEMORY, INC. (the "Defendant"), a  
18 corporation organized and existing under the laws of Japan, hereby enter into the following Plea  
19 Agreement pursuant to Rule 11(c)(1)(C) of the Federal Rules of Criminal Procedure:

20 **RIGHTS OF DEFENDANT**

21 1. The Defendant understands its rights:

22 (a) to be represented by an attorney;

23 (b) to be charged by indictment;

24 (c) as a corporation organized and existing under the laws of Japan, to decline  
25 to accept service of the Summons in this case, and to contest the jurisdiction of the  
26 United States to prosecute this case against it in the United States District Court for the  
27 Northern District of California;

28 (d) to plead not guilty to any criminal charge brought against it;

1 (e) to have a trial by jury, at which it would be presumed not guilty of the  
2 charge and the United States would have to prove every essential element of the charged  
3 offense beyond a reasonable doubt for it to be found guilty;

4 (f) to confront and cross-examine witnesses against it and to subpoena  
5 witnesses in its defense at trial;

6 (g) to appeal its conviction; and

7 (h) to appeal the imposition of sentence against it.

8 **AGREEMENT TO PLEAD GUILTY**  
9 **AND WAIVE CERTAIN RIGHTS**

10 2. The Defendant knowingly and voluntarily waives the rights set out in Paragraph  
11 1(b)-(g) above, including all jurisdictional defenses to the prosecution of this case, and agrees  
12 voluntarily to consent to the jurisdiction of the United States to prosecute this case against it in  
13 the United States District Court for the Northern District of California. The Defendant also  
14 knowingly and voluntarily waives the right to file any appeal, any collateral attack, or any other  
15 writ or motion, including but not limited to an appeal under 18 U.S.C. § 3742, that challenges the  
16 sentence imposed by the Court if that sentence is consistent with or below the recommended  
17 sentence in Paragraph 8 of this Plea Agreement, regardless of how the sentence is determined by  
18 the Court. This Plea Agreement does not affect the rights or obligations of the United States as  
19 set forth in 18 U.S.C. § 3742(b) and (c). Further, pursuant to Fed. R. Crim. P. 7(b), the  
20 Defendant will waive indictment and plead guilty at arraignment to a two-count Information to  
21 be filed in the United States District Court for the Northern District of California. The  
22 Information will charge the Defendant with one count of participating in a conspiracy in the  
23 United States and elsewhere to suppress and eliminate competition by fixing the prices of  
24 Dynamic Random Access Memory (“DRAM”) to be sold to certain original equipment  
25 manufacturers of personal computers and servers (“OEMs”) from on or about April 1, 1999, to  
26 on or about June 15, 2002, in violation of the Sherman Antitrust Act, 15 U.S.C. § 1.  
27 Additionally, the Information will charge the Defendant with a second count of participating in a  
28 conspiracy to submit collusive, noncompetitive, and rigged bids to Sun Microsystems on a 1

1 Gigabyte Next-Generation Dual In-Line Memory Module (“1 GB NG DIMM”) lot during a Sun  
2 Microsystems auction on March 26, 2002.

3 3. The Defendant, pursuant to the terms of this Plea Agreement, will plead guilty to  
4 the criminal charges described in Paragraph 2 above and will make a factual admission of guilt  
5 to the Court in accordance with Fed. R. Crim. P. 11, as set forth in Paragraph 4 below.

6 **FACTUAL BASIS FOR OFFENSE CHARGED**

7 4. Had this case gone to trial, the United States would have presented evidence  
8 sufficient to prove the following facts:

9 (a) For purposes of this Plea Agreement, the “Relevant Period” is that period  
10 from on or about April 1, 1999 to on or about June 15, 2002. From April 1, 1999 until on  
11 or about March 1, 2001, HITACHI, LTD. (“Hitachi”) and NEC CORPORATION  
12 (“NEC”), corporations organized and existing under the laws of Japan, sold DRAM  
13 products into various markets, including the U.S. market. On December 20, 1999,  
14 Hitachi and NEC (collectively, the “Corporate Founders”) formed Defendant, Elpida  
15 Memory Inc. (“Elpida”), a corporation organized and existing under the laws of Japan.  
16 The Defendant has its headquarters and principal place of business in Tokyo, Japan.  
17 Beginning on or about March 1, 2001, the Defendant sold DRAM products into various  
18 markets, including the U.S. market.

19 (b) DRAM is the most commonly used semiconductor memory product.  
20 DRAM provides high-speed storage and retrieval of electronic information in personal  
21 computers, servers, and other devices. During the Relevant Period, the Defendant, or its  
22 Corporate Founders, were producers of DRAM and were engaged in the sale of DRAM  
23 in the United States and elsewhere and employed more than 200 employees. For  
24 purposes of this Plea Agreement, “DRAM” means dynamic random access memory  
25 semiconductor devices and modules, including synchronous dynamic random access  
26 memory (“SDRAM”), double data rate dynamic random access memory (“DDR”), and  
27 Rambus dynamic random access memory (“RDRAM”) semiconductor devices and  
28 modules. During the Relevant Period, the DRAM sales made by Defendant, and its

1 Corporate Founders, directly affected by the conspiracy, to OEMs in the United States  
2 totaled \$425 million in the aggregate. The sales during the Relevant Period directly  
3 affected by the conspiracy were made as follows: NEC and Hitachi respectively sold  
4 \$209 million and \$113 million of DRAM products from April 1, 1999 through February  
5 28, 2001; and Elpida sold \$103 million of DRAM products from March 1, 2001 through  
6 June 15, 2002.

7 (c) For purposes of forming and carrying out the conspiracy charged in Count  
8 One of the Information, during at least certain periods of time during the Relevant Period,  
9 the Defendant, or its Corporate Founders, through certain of their respective officers and  
10 employees, participated in a conspiracy in the United States and elsewhere among certain  
11 DRAM producers, the primary purpose of which was to fix the price of DRAM sold to  
12 certain OEMs. The conspiracy directly affected the following OEMs in the United  
13 States: Dell Inc., Hewlett-Packard Company, Compaq Computer Corporation,  
14 International Business Machines Corporation, Apple Computer Inc., and Gateway, Inc.  
15 In furtherance of the conspiracy, the Defendant, or its Corporate Founders, through  
16 certain of their respective officers and employees, engaged in discussions and attended  
17 meetings with representatives of certain other DRAM producers and sellers. During  
18 these discussions and meetings, agreements were reached to fix the price of DRAM to be  
19 sold to certain OEMs.

20 (d) As to Count One, at certain times during the Relevant Period, DRAM  
21 prices decreased significantly. Nevertheless, the Defendant, or its Corporate Founders,  
22 and their coconspirators reached agreements to limit the rate of price declines, which  
23 were achieved with varying levels of effectiveness. At certain other times, the  
24 Defendant, or its Corporate Founders, and their coconspirators reached agreements on  
25 price increases and were able to institute price increases on DRAM sales to certain  
26 OEMs.

27 (e) For purposes of forming and carrying out the conspiracy charged in Count  
28 Two of the Information, Defendant's employees had discussions and reached agreements

1 with employees of its coconspirator on how it would allocate and divide a bid offered by  
2 Sun Microsystems in an auction on or about March 26, 2002. The Defendant and its  
3 coconspirators submitted bid proposals to Sun Microsystems for a bid on a 1 GB NG  
4 DIMM lot to achieve that result, including submitting complementary bids to ensure the  
5 success of their agreement.

6 (f) During the Relevant Period, DRAM sold by one or more of the  
7 conspirator firms, and equipment and supplies necessary to the sale of DRAM, as well as  
8 payments for DRAM, traveled in interstate and foreign commerce. The business  
9 activities of the Defendant, or its Corporate Founders, and their coconspirators in  
10 connection with the sale of DRAM affected by this conspiracy were within the flow of,  
11 and substantially affected, interstate and foreign trade and commerce.

12 (g) Acts in furtherance of these conspiracies were carried out within the  
13 Northern District of California. DRAM affected by these conspiracies were sold by one  
14 or more of the conspirators to OEMs in this District.

#### 15 **POSSIBLE MAXIMUM SENTENCE**

16 5. The Defendant understands that the statutory maximum penalty which may be  
17 imposed against it upon conviction for each count of a violation of Section One of the Sherman  
18 Antitrust Act is a fine in an amount equal to the greatest of:

- 19 (a) \$10 million (15 U.S.C. § 1);  
20 (b) twice the gross pecuniary gain the conspirators derived from the crime (18  
21 U.S.C. § 3571(c) and (d)); or  
22 (c) twice the gross pecuniary loss caused to the victims of the crime by the  
23 conspirators (18 U.S.C. § 3571(c) and (d)).

24 6. In addition, the Defendant understands that:

- 25 (a) pursuant to 18 U.S.C. § 3561(c)(1), the Court may impose a term of  
26 probation of at least one year, but not more than five years;  
27 (b) pursuant to § 8B1.1 of the United States Sentencing Guidelines  
28 (“U.S.S.G.,” “Sentencing Guidelines,” or “Guidelines”), 18 U.S.C. § 3563(b)(2) or

1 3663(a)(3), the Court may order it to pay restitution to the victims of the offense; and  
2 (c) pursuant to 18 U.S.C. § 3013(a)(2)(B), the Court is required to order the  
3 Defendant to pay a \$400 special assessment upon conviction for each count of the  
4 charged crime.

### 5 **SENTENCING GUIDELINES**

6 7. The Defendant understands that the Sentencing Guidelines are advisory, not  
7 mandatory, but that the Court must consider the Guidelines in effect on the day of sentencing,  
8 along with the other factors set forth in 18 U.S.C. § 3553(a), in determining and imposing  
9 sentence. The Defendant understands that the Guidelines determinations will be made by the  
10 Court by a preponderance of the evidence standard. The Defendant understands that although  
11 the Court is not ultimately bound to impose a sentence within the applicable Guidelines range, its  
12 sentence must be reasonable based upon consideration of all relevant sentencing factors set forth  
13 in 18 U.S.C. § 3553(a). Pursuant to U.S.S.G. § 1B1.8, the United States agrees that  
14 self-incriminating information that the Defendant and its cooperating officers and employees  
15 provide to the United States pursuant to this Plea Agreement will not be used to increase the  
16 volume of affected commerce attributable to the Defendant or in determining the Defendant's  
17 applicable Guidelines range, except to the extent provided in U.S.S.G. § 1B1.8(b).

### 18 **SENTENCING AGREEMENT**

19 8. Pursuant to Fed. R. Crim. P. 11(c)(1)(C), the United States and the Defendant  
20 agree that the appropriate disposition of this case is, and agree to recommend jointly that the  
21 Court impose a sentence requiring the Defendant to pay to the United States a criminal fine of  
22 \$84 million, pursuant to 18 U.S.C. § 3571(d) (the "Recommended Sentence"). The parties agree  
23 that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not  
24 adequately taken into consideration by the U.S. Sentencing Commission in formulating the  
25 Guidelines justifying a departure pursuant to U.S.S.G. § 5K2.0. The parties agree not to seek or  
26 support any sentence outside of the Guidelines range nor any Guidelines adjustment for any  
27 reason that is not set forth in this Plea Agreement. The parties further agree that the  
28 Recommended Sentence set forth in this Plea Agreement is reasonable.

1 (a) The Defendant understands that the Court will order it to pay a \$800  
2 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B), in addition to any fine  
3 imposed.

4 (b) The United States and the Defendant jointly submit that this Plea  
5 Agreement, together with the record that will be created by the United States and the  
6 Defendant at the plea and sentencing hearings, and the further disclosure described in  
7 Paragraph 10, will provide sufficient information concerning the Defendant, the crime  
8 charged in this case, and the Defendant's role in the crime to enable the meaningful  
9 exercise of sentencing authority by the Court under 18 U.S.C. § 3553. The United States  
10 and Defendant agree to request jointly that the Court accept the Defendant's guilty plea  
11 and impose sentence on an expedited schedule as early as the date of arraignment, based  
12 upon the record provided by the Defendant and the United States, under the provisions of  
13 Fed. R. Crim. P. 32(c)(1)(A)(ii), U.S.S.G. § 6A1.1, and Rule 32-1(b) of the U.S.D.C.  
14 N.D. California Criminal Local Rules. The Court's denial of the request to impose  
15 sentence on an expedited schedule will not void this Plea Agreement.

16 (c) The United States contends that had this case gone to trial, the United States  
17 would have presented evidence to prove that the gain derived from or the loss resulting  
18 from the charged offense is sufficient to justify the Recommended Sentence, pursuant to  
19 18 U.S.C. § 3571(d). For purposes of this plea and sentencing, the Defendant waives its  
20 right to contest this calculation.

21 9. The United States and the Defendant agree that the applicable Sentencing  
22 Guidelines fine range exceeds the fine contained in the Recommended Sentence set out in  
23 Paragraph 8 above. Subject to the full and continuing cooperation of the Defendant, as described  
24 in Paragraph 13 of this Plea Agreement, and prior to sentencing in this case, the United States  
25 agrees that it will make a motion, pursuant to U.S.S.G. § 8C4.1, for a downward departure from  
26 the Guidelines fine range and will request that the Court impose the Recommended Sentence set  
27 out in Paragraph 8 of this Plea Agreement because of the Defendant's substantial assistance in  
28 the government's investigation and prosecution of violations of federal criminal law in the

1 DRAM industry.

2 10. Subject to the ongoing, full, and truthful cooperation of the Defendant described  
3 in Paragraph 13 of this Plea Agreement, and before sentencing in the case, the United States will  
4 fully advise the Court and the Probation Office as to: (i) the fact, manner, and extent of the  
5 Defendant's cooperation and its commitment to prospective cooperation with the United States'  
6 investigation and prosecutions; (ii) all material facts relating to the Defendant's involvement in  
7 the charged offense; and (iii) all other relevant conduct.

8 11. The United States and the Defendant understand that the Court retains complete  
9 discretion to accept or reject the Recommended Sentence provided for in Paragraph 8 of this  
10 Plea Agreement.

11 (a) If the Court does not accept the Recommended Sentence, the United States  
12 and the Defendant agree that this Plea Agreement, except for Paragraph 11(b) below,  
13 shall be rendered void.

14 (b) If the Court does not accept the Recommended Sentence, the Defendant  
15 will be free to withdraw its guilty plea (Fed. R. Crim. P. 11(c)(5) and (d)). If the  
16 Defendant withdraws its guilty plea, this Plea Agreement, the guilty plea, and any  
17 statement made in the course of any proceedings under Fed. R. Crim. P. 11 regarding the  
18 guilty plea or this Plea Agreement, or made in the course of plea discussions with an  
19 attorney for the government, shall not be admissible against the Defendant in any  
20 criminal or civil proceeding, except as otherwise provided in Fed. R. Evid. 410. In  
21 addition, the Defendant agrees that if it withdraws its guilty plea pursuant to this  
22 subparagraph of this Plea Agreement, the statute of limitations period for any offense  
23 referred to in this Plea Agreement will be tolled for the period between the date of the  
24 signing of this Plea Agreement and the date the Defendant withdrew its guilty plea or for  
25 a period of sixty (60) days after the date of the signing of this Plea Agreement, whichever  
26 period is greater.

27 12. In light of the civil class action cases filed against Defendant, including *In re*  
28 *DRAM Antitrust Litigation*, No. M-02-1486PJH, MDL No. 1486, in the United States District



1 Court, Northern District of California, and *DRAM Cases*, No. CJC-03-004265, in the Superior  
2 Court, San Francisco, California, which potentially provide for a recovery of a multiple of actual  
3 damages, the United States agrees that it will not seek a restitution order for the offense charged  
4 in the Information. The Defendant asserts that, the Defendant, by signing this Plea Agreement,  
5 is not assuming the civil liability, if any, of its Corporate Founders.

#### 6 **DEFENDANT'S COOPERATION**

7 13. The Defendant and its subsidiaries that are engaged in the sale or production of  
8 DRAM (collectively, "Related Entities") will cooperate fully and truthfully with the United  
9 States in: (i) the prosecution of this case; (ii) the current federal investigation of violations of  
10 federal antitrust and related criminal laws involving the production or sale of DRAM in the  
11 United States and elsewhere; and (iii) any litigation or other proceedings arising or resulting  
12 from any such investigation to which the United States is a party (collectively i-iii, "Federal  
13 Proceeding"). The ongoing, full, and truthful cooperation of the Defendant shall include, but not  
14 be limited to:

15 (a) producing to the United States all non-privileged documents, information,  
16 and other materials (with translations into English), wherever located, in the possession,  
17 custody, or control of the Defendant or any of its Related Entities, requested by the  
18 United States in connection with any Federal Proceeding; and

19 (b) using its best efforts to secure the ongoing, full, and truthful cooperation,  
20 as defined in Paragraph 14 of this Plea Agreement, of the current and former directors,  
21 officers, and employees of the Defendant or any of its Related Entities as may be  
22 requested by the United States – but excluding Choei Matsushima, Osamu Fujiwara,  
23 Akihiko Furusawa, Hiroshi Higuchi, and Dimitrios James ("Jim") Sogas – including  
24 making these persons available in the United States and at other mutually agreed-upon  
25 locations, at the Defendant's expense, for interviews and the provision of testimony in  
26 grand jury, trial, and other judicial proceedings in connection with any Federal  
27 Proceeding.

28 14. The ongoing, full, and truthful cooperation of each person described in Paragraph

1 13(b) above will be subject to the procedures and protections of this Paragraph, and shall  
2 include, but not be limited to:

3 (a) producing in the United States and at other mutually agreed-upon  
4 locations all non-privileged documents (with translations into English), including claimed  
5 personal documents, and other materials, wherever located, requested by attorneys and  
6 agents of the United States in connection with any Federal Proceeding;

7 (b) making himself or herself available for interviews in the United States and  
8 at other mutually agreed-upon locations, not at the expense of the United States, upon the  
9 request of attorneys and agents of the United States;

10 (c) responding fully and truthfully to all inquiries of the United States in  
11 connection with any Federal Proceeding, without falsely implicating any person or  
12 intentionally withholding any information, subject to the penalties of making false  
13 statements (18 U.S.C. § 1001) and obstruction of justice (18 U.S.C. § 1503);

14 (d) otherwise voluntarily providing the United States with any non-privileged  
15 material or information not requested in (a) - (c) of this Paragraph that he or she may  
16 have that is related to any Federal Proceeding;

17 (e) when called upon to do so by the United States in connection with any  
18 Federal Proceeding, testifying in grand jury, trial, and other judicial proceedings in the  
19 United States fully, truthfully, and under oath, subject to the penalties of perjury (18  
20 U.S.C. § 1621), making false statements or declarations in grand jury or court  
21 proceedings (18 U.S.C. § 1623), contempt (18 U.S.C. §§ 401- 402), and obstruction of  
22 justice (18 U.S.C. § 1503); and

23 (f) agreeing that, if the agreement not to prosecute him or her in this Plea  
24 Agreement is rendered void under Paragraph 16(c), the statute of limitations period for  
25 any Relevant Offense as defined in Paragraph 16(a) will be tolled as to him or her for the  
26 period between the date of the signing of this Plea Agreement and six (6) months after  
27 the date that the United States gave notice of its intent to void its obligations to that  
28 person under the Plea Agreement.

**GOVERNMENT'S AGREEMENT**

15. Upon acceptance of the guilty plea called for by this Plea Agreement and the imposition of the Recommended Sentence, and subject to the cooperation requirements of Paragraph 13 of this Plea Agreement, the United States agrees that it will not bring further criminal charges against the Defendant or any Related Entities for any act or offense committed before the date of this Plea Agreement that was undertaken in furtherance of an antitrust conspiracy involving the production or sale of DRAM in the United States and elsewhere. The nonprosecution terms of this Paragraph do not apply to civil matters of any kind, to any violation of the federal tax or securities laws, or to any crime of violence.

16. The United States agrees to the following:

(a) Upon the Court's acceptance of the guilty plea called for by this Plea Agreement and the imposition of the Recommended Sentence and subject to the exceptions noted in Paragraph 16(c), the United States will not bring criminal charges against any current or former director, officer, or employee of the Defendant or its Related Entities for any act or offense committed before the date of this Plea Agreement and while that person was acting as a director, officer, or employee of the Defendant or its Related Entities that was undertaken in furtherance of or related to an antitrust conspiracy involving the production or sale of DRAM in the United States and elsewhere, or undertaken in connection with any investigation of such a conspiracy ("Relevant Offense"), except that the protections granted in this Paragraph shall not apply to Choei Matsushima, Osamu Fujiwara, Akihiko Furusawa, Hiroshi Higuchi, and Dimitrios James ("Jim") Sogas;

(b) Should the United States determine that any current or former director, officer, or employee of the Defendant or its Related Entities may have information relevant to any Federal Proceeding, the United States may request that person's cooperation under the terms of this Plea Agreement by written request delivered to counsel for the individual (with a copy to the undersigned counsel for the Defendant) or, if the individual is not known by the United States to be represented, to the undersigned

1 counsel for the Defendant;

2 (c) If any person requested to provide cooperation under Paragraph 16(b) fails  
3 to comply with his or her obligations under Paragraph 14, then the terms of this Plea  
4 Agreement as they pertain to that person, and the agreement not to prosecute that person  
5 granted in this Plea Agreement, shall be rendered void;

6 (d) Except as provided in Paragraph 16(e), information provided by a person  
7 described in Paragraph 16(b) to the United States under the terms of this Plea Agreement  
8 pertaining to any Relevant Offense, or any information directly or indirectly derived from  
9 that information, may not be used against that person in a criminal case, except in a  
10 prosecution for perjury (18 U.S.C. § 1621), making a false statement or declaration  
11 (18 U.S.C. §§ 1001, 1623), or obstruction of justice (18 U.S.C. § 1503);

12 (e) If any person who provides information to the United States under this  
13 Plea Agreement fails to comply fully with his or her obligations under Paragraph 14 of  
14 this Plea Agreement, the agreement in Paragraph 16(d) not to use that information or any  
15 information directly or indirectly derived from it against that person in a criminal case  
16 shall be rendered void;

17 (f) The non-prosecution terms of this Paragraph do not apply to civil matters  
18 of any kind, to any violation of the federal tax or securities laws, or to any crime of  
19 violence; and

20 (g) Documents provided under Paragraphs 13(a) and 14(a) shall be deemed  
21 responsive to outstanding grand jury subpoenas issued to the Defendant and/or any of its  
22 Related Entities.

23 17. The United States agrees that when any person travels to the United States for  
24 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for  
25 meetings with counsel in preparation therefor, the United States will take no action, based upon  
26 any Relevant Offense, to subject such person to arrest, detention, or service of process, or to  
27 prevent such person from entering or departing the United States. This Paragraph does not apply  
28 to an individual's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C.

§ 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. § 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401- 402) in connection with any testimony or information provided or requested in any Federal Proceeding.

18. The Defendant understands that it may be subject to administrative action by federal or state agencies other than the United States Department of Justice, Antitrust Division, based upon the conviction resulting from this Plea Agreement, and that this Plea Agreement in no way controls whatever action, if any, other agencies may take. However, the United States agrees that, if requested, it will advise the appropriate officials of any governmental agency considering such administrative action of the fact, manner, and extent of the cooperation of the Defendant and its Related Entities, including the fact that the United States, pursuant to U.S.S.G. § 8C4.1, moved for a downward departure from the Guidelines fine range, as matters for that agency to consider before determining what administrative action, if any, to take.

#### **REPRESENTATION BY COUNSEL**

19. The Defendant has been represented by counsel and is fully satisfied that its attorneys have provided competent legal representation. The Defendant has thoroughly reviewed this Plea Agreement and acknowledges that counsel has advised it of the nature of the charge, any possible defenses to the charge, and the nature and range of possible sentences.

#### **VOLUNTARY PLEA**

20. The Defendant's decision to enter into this Plea Agreement and to tender a plea of guilty is freely and voluntarily made and is not the result of force, threats, assurances, promises, or representations other than the representations contained in this Plea Agreement. The United States has made no promises or representations to the Defendant as to whether the Court will accept or reject the recommendations contained within this Plea Agreement.

#### **VIOLATION OF PLEA AGREEMENT**

21. The Defendant agrees that, should the United States determine in good faith, during the period that any Federal Proceeding is pending, that the Defendant or any of its Related Entities has failed to provide full and truthful cooperation, as described in Paragraph 13 of this Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the

1 United States will notify counsel for the Defendant in writing by personal or overnight delivery  
2 or facsimile transmission and may also notify counsel by telephone of its intention to void any of  
3 its obligations under this Plea Agreement (except its obligations under this Paragraph), and the  
4 Defendant and its Related Entities shall be subject to prosecution for any federal crime of which  
5 the United States has knowledge including, but not limited to, the substantive offenses relating to  
6 the investigation resulting in this Plea Agreement. The Defendant may seek Court review of any  
7 determination made by the United States under this Paragraph to void any of its obligations  
8 under this Plea Agreement. The Defendant and its Related Entities agree that, in the event that  
9 the United States is released from its obligations under this Plea Agreement and brings criminal  
10 charges against the Defendant or its Related Entities for any offense referred to in Paragraph 15  
11 of this Plea Agreement, the statute of limitations period for such offense will be tolled for the  
12 period between the date of the signing of this Plea Agreement and six (6) months after the date  
13 the United States gave notice of its intent to void its obligations under this Plea Agreement.

14 22. The Defendant understands and agrees that in any further prosecution  
15 of it or its Related Entities resulting from the release of the United States from its obligations  
16 under this Plea Agreement, because of the Defendant's or its Related Entities' violation of this  
17 Plea Agreement, any documents, statements, information, testimony, or evidence provided by it,  
18 its Related Entities, or its current directors, officers, or employees of it or its Related Entities, to  
19 attorneys or agents of the United States, federal grand juries, or courts, and any leads derived  
20 therefrom, may be used against it or its Related Entities in any such further prosecution. In  
21 addition, the Defendant unconditionally waives its right to challenge the use of such evidence in  
22 any such further prosecution, notwithstanding the protections of Fed. R. Evid. 410.

#### 23 **ENTIRETY OF AGREEMENT**

24 23. This Plea Agreement and the attached Joint Sentencing Memorandum between  
25 the United States and Defendant constitute the entire agreement between the United States and  
26 the Defendant concerning the disposition of the criminal charge in this case. This Plea  
27 Agreement cannot be modified except in writing, signed by the United States and the Defendant.  
28

1           24.     The undersigned is authorized to enter this Plea Agreement on behalf of the  
2 Defendant ELPIDA MEMORY, INC. as evidenced by the Resolution of the Board of Directors  
3 of the Defendant attached to, and incorporated by reference in, this Plea Agreement.

4           25.     The undersigned attorneys for the United States have been authorized  
5 by the Attorney General of the United States to enter this Plea Agreement on behalf of the  
6 United States.

7           26.     A facsimile signature shall be deemed an original signature for the purpose of  
8 executing this Plea Agreement. Multiple signature pages are authorized for the purpose of  
9 executing this Plea Agreement.

10  
11 DATED: January 27, 2006

12  
13 AGREED

14 BY: \_\_\_\_\_/s/  
15 Elpida Memory, Inc.  
16 2-1, Yaesu 2-chome  
17 Chuo-ku, Tokyo  
18 Japan

19 BY: \_\_\_\_\_/s/  
20 James G. Kreissman, CA No. 206740  
21 Simpson Thacher & Bartlett LLP  
22 3330 Hillview Avenue  
23 Palo Alto, CA 94304  
24 Tel: (650) 251-5000  
25 Fax: (650) 251-5002

BY: \_\_\_\_\_/s/  
Niall E. Lynch, CA No. 157959  
Nathanael M. Cousins, CA No. 177944  
May Y. Lee, CA No. 209366  
Brigid S. Biermann, CA No. 231705  
Trial Attorneys  
U.S. Department of Justice  
Antitrust Division  
450 Golden Gate Avenue  
Box 36046, Room 10-0101  
San Francisco, CA 94102  
Tel: (415) 436-6660  
Fax: (415) 436-6687