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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 UNITED STATES OF AMERICA) Case No. 04-299 (PJH)
13)
14 v.) PLEA AGREEMENT
15 INFINEON TECHNOLOGIES AG,)
16 Defendant.) San Francisco Venue

17 **PLEA AGREEMENT**

18 The United States of America and INFINEON TECHNOLOGIES AG (“Defendant”), a
19 corporation organized and existing under the laws of the Federal Republic of Germany
20 (“Germany”), hereby enter into the following Plea Agreement pursuant to Rule 11(c)(1)(C) of
21 the Federal Rules of Criminal Procedure (“Fed. R. Crim. P.”):

22 **RIGHTS OF DEFENDANT**

- 23 1. The Defendant understands its rights:
24 (a) to be represented by an attorney;
25 (b) to be charged by Indictment;
26 (c) as a corporation organized and existing under the laws of Germany, to
27 decline to accept service of the Summons in this case, and to contest the jurisdiction of
28 the United States to prosecute this case against it in the United States District Court for

1 the Northern District of California;

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

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

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

8 (g) to appeal its conviction if it is found guilty; and

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

10
11 **AGREEMENT TO PLEAD GUILTY**
AND WAIVE CERTAIN RIGHTS

12 2. The Defendant waives the rights set out in Paragraph 1(b)-(g) above, including all
13 jurisdictional defenses to the prosecution of this case, and agrees voluntarily to consent to the
14 jurisdiction of the United States to prosecute this case against it in the United States District
15 Court for the Northern District of California. The Defendant agrees to have its sentence
16 determined under the United States Sentencing Guidelines (“U.S.S.G.”) and waives all
17 constitutional challenges to the validity of the U.S.S.G. The Defendant waives any right it may
18 have to have facts that determine its statutory maximum sentence or Guidelines fine range under
19 the U.S.S.G. (including any facts used to determine its offense level, base fine amount,
20 culpability score, any specific offense characteristic or other enhancement or adjustment, or any
21 upward departure under the U.S.S.G., as well as any pecuniary gain or loss resulting from the
22 charged offense) alleged in an indictment and found by a jury beyond a reasonable doubt. The
23 Defendant agrees that facts that determine its statutory maximum sentence or Guidelines fine
24 range will be found by the court at sentencing by a preponderance of the evidence and that the
25 court may consider any reliable evidence, including hearsay, in making such determinations.
26 The Defendant also waives the right to appeal the imposition of sentence against it, so long as
27 the sentence imposed is consistent with the recommendation in Paragraph 8 of this Plea
28 Agreement. Further, pursuant to Fed. R. Crim. P. 7(b), the Defendant will waive indictment and

1 plead guilty at arraignment to a one-count Information to be filed in the United States District
2 Court for the Northern District of California. The Information will charge the Defendant with
3 participating in a conspiracy in the United States and elsewhere to suppress and eliminate
4 competition by fixing the prices of Dynamic Random Access Memory (“DRAM”) to be sold to
5 certain original equipment manufacturers of personal computers and servers (“OEMs”) from on
6 or about July 1, 1999, to on or about June 15, 2002, in violation of the Sherman Antitrust Act, 15
7 U.S.C. § 1.

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

11 **FACTUAL BASIS FOR OFFENSE CHARGED**

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

14 (a) For purposes of this Plea Agreement, the “relevant period” is that period
15 from on or about July 1, 1999, to on or about June 15, 2002. During the relevant period,
16 the Defendant was a corporation organized and existing under the laws of Germany. The
17 Defendant has its principal place of business in Munich, Germany.

18 (b) DRAM is the most commonly used semiconductor memory product.
19 DRAM provides high-speed storage and retrieval of electronic information in personal
20 computers, servers, and other devices. During the relevant period, the Defendant
21 (including its subsidiaries) was a producer of DRAM and was engaged in the sale of
22 DRAM in the United States and elsewhere.

23 (c) During at least certain periods of time during the relevant period, the
24 Defendant, through certain of its officers and employees, participated in a conspiracy in
25 the United States and elsewhere among certain DRAM producers, the primary purpose of
26 which was to fix the price of DRAM sold to certain OEMs. The conspiracy directly
27 affected these OEMs in the United States: Dell Inc., Hewlett-Packard Company, Compaq
28 Computer Corporation, International Business Machines Corporation, Apple Computer

1 Inc., and Gateway, Inc. In furtherance of the conspiracy, the Defendant, through certain
2 of its officers and employees, engaged in discussions and attended meetings with
3 representatives of certain other DRAM producers and sellers. During these discussions
4 and meetings, agreements were reached to fix the price of DRAM to be sold to certain
5 OEMs.

6 (d) At certain times during the relevant period, DRAM prices decreased
7 significantly. Nevertheless, the Defendant and its coconspirators reached agreements to
8 limit the rate of price declines, which were achieved with varying levels of effectiveness.
9 At other periods, the Defendant and its coconspirators reached agreements on price
10 increases and were able to institute price increases on DRAM sales to certain OEMs.

11 (e) During the relevant period, DRAM sold by one or more of the conspirator
12 firms, and equipment and supplies necessary to the sale of DRAM, as well as payments
13 for DRAM, traveled in interstate and foreign commerce. The business activities of the
14 Defendant and its co-conspirators in connection with the sale of DRAM affected by this
15 conspiracy were within the flow of, and substantially affected, interstate and foreign trade
16 and commerce.

17 (f) Acts in furtherance of this conspiracy were carried out within the Northern
18 District of California. DRAM affected by this conspiracy was sold by one or more of the
19 conspirators to customers in this District.

20 **POSSIBLE MAXIMUM SENTENCE**

21 5. The Defendant understands that the maximum penalty which may be imposed
22 against it upon conviction for a violation of Section One of the Sherman Antitrust Act is a fine in
23 an amount equal to the greatest of:

24 (a) \$10 million (15 U.S.C. § 1);

25 (b) twice the gross pecuniary gain the conspirators derived from the crime (18
26 U.S.C. § 3571(c) and (d)); or

27 (c) twice the gross pecuniary loss caused to the victims of the crime by the
28 conspirators (18 U.S.C. § 3571(c) and (d)).

1 any accrued interest); at the four-year anniversary — \$27 million (plus any accrued
2 interest); and at the five-year anniversary — \$25 million (plus any accrued interest);
3 provided, however, that the Defendant shall have the option at any time before the five-
4 year anniversary of prepaying the remaining balance (plus any accrued interest) then
5 owing on the fine.

6 (b) The Defendant understands that the Court will order it to pay a \$400
7 special assessment, pursuant to 18 U.S.C. § 3013(a)(2)(B) and U.S.S.G. § 8E1.1, in
8 addition to any fine imposed.

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

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

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

1 District of California, and *DRAM Cases*, No. CJC-03-004265, in the Superior Court, San
2 Francisco, California, which potentially provide for a recovery of a multiple of actual damages,
3 the United States agrees that it will not seek a restitution order for the offense charged in the
4 Information.

5 **DEFENDANT’S COOPERATION**

6 13. The Defendant and its wholly-owned subsidiaries (including but not limited to
7 INFINEON TECHNOLOGIES NORTH AMERICA CORP.) (collectively, “Related Entities”)
8 will cooperate fully and truthfully with the United States in: (i) the prosecution of this case; (ii)
9 the current federal investigation of violations of federal antitrust and related criminal laws
10 involving the production or sale of DRAM in the United States and elsewhere; (iii) any other
11 federal investigation resulting therefrom; and (iv) any litigation or other proceedings arising or
12 resulting from any such investigation to which the United States is a party (“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 United
18 States in connection with any Federal Proceeding; and

19 (b) using its best efforts to secure the ongoing, full, and truthful cooperation, as
20 defined in Paragraph 14 of this Plea Agreement, of the current directors, officers, and
21 employees of the Defendant or any of its Related Entities as may be requested by the
22 United States, but excluding Heinrich Florian, Günter Hefner, Peter Schaefer and T. Rudd
23 Corwin, including making these persons available in the United States and at other
24 mutually agreed-upon locations, at the Defendant’s expense, for interviews and the
25 provision of testimony in grand jury, trial, and other judicial proceedings in connection
26 with any Federal Proceeding.

27 14. The ongoing, full, and truthful cooperation of each person described in Paragraph
28 13(b) above will be subject to the procedures and protections of this paragraph, and shall include,

1 but not be limited to:

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

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

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

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

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

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

28 **GOVERNMENT'S AGREEMENT**

1 15. Upon acceptance of the guilty plea called for by this Plea Agreement and the
2 imposition of the recommended sentence, and subject to the cooperation requirements of
3 Paragraph 13 of this Plea Agreement, the United States agrees that it will not bring further
4 criminal charges against the Defendant or any of its Related Entities for any act or offense
5 committed before the date of this Plea Agreement that was undertaken in furtherance of an
6 antitrust conspiracy involving the production or sale of DRAM in the United States and
7 elsewhere, or undertaken in connection with any investigation of such a conspiracy. The
8 nonprosecution terms of this paragraph do not apply to civil matters of any kind, to any violation
9 of the federal tax or securities laws, or to any crime of violence.

10 16. The United States agrees to the following:

11 (a) Upon the Court's acceptance of the guilty plea called for by this Plea
12 Agreement and the imposition of the recommended sentence and subject to the exceptions
13 noted in Paragraph 16(c), the United States will not bring criminal charges against any
14 current or former director, officer, or employee of the Defendant or its Related Entities for
15 any act or offense committed before the date of this Plea Agreement and while that person
16 was acting as a director, officer, or employee of the Defendant or its Related Entities that
17 was undertaken in furtherance of an antitrust conspiracy involving the production or sale
18 of DRAM in the United States and elsewhere, or undertaken in connection with any
19 investigation of such a conspiracy ("Relevant Offense"), except that the protections
20 granted in this paragraph shall not apply to Heinrich Florian, Günter Hefner, Peter
21 Schaefer and T. Rudd Corwin;

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

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

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

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

16 (f) The nonprosecution terms of this paragraph do not apply to civil matters of
17 any kind, to any violation of the federal tax or securities laws, or to any crime of violence;
18 and

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

22 17. The United States agrees that when any person travels to the United States for
23 interviews, grand jury appearances, or court appearances pursuant to this Plea Agreement, or for
24 meetings with counsel in preparation therefor, the United States will take no action, based upon
25 any Relevant Offense, to subject such person to arrest, detention, or service of process, or to
26 prevent such person from entering or departing the United States. This paragraph does not apply
27 to an individual's commission of perjury (18 U.S.C. § 1621), making false statements (18 U.S.C.
28 § 1001), making false statements or declarations in grand jury or court proceedings (18 U.S.C. §

1 1623), obstruction of justice (18 U.S.C. § 1503), or contempt (18 U.S.C. §§ 401- 402) in
2 connection with any testimony or information provided or requested in any Federal Proceeding.

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

12 **REPRESENTATION BY COUNSEL**

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

17 **VOLUNTARY PLEA**

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

23 **VIOLATION OF PLEA AGREEMENT**

24 21. The Defendant agrees that, should the United States determine in good faith,
25 during the period that any Federal Proceeding is pending, that the Defendant or any of its Related
26 Entities has failed to provide full and truthful cooperation, as described in Paragraph 13 of this
27 Plea Agreement, or has otherwise violated any provision of this Plea Agreement, the United
28 States will notify counsel for the Defendant in writing by personal or overnight delivery or

1 24. The undersigned is authorized to enter this Plea Agreement on behalf of the
2 Defendant as evidenced by the Resolution of the Board of Directors of the Defendant attached to,
3 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 United
6 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: September 14, 2004

12 Respectfully submitted,

13
14 BY: _____/s/
15 Infineon Technologies AG
16 St. Martin-Strasse 53
17 MCH B/KU/164616
18 81669 Munich
19 Germany

20 BY: _____/s/
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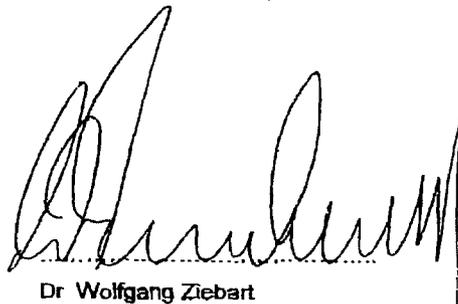
**Minutes of the Resolution of the Management Board of Infineon Technologies AG
with respect to the Execution of the Plea Agreement as in Annex 1**

On September 06, 2004, after discussion, the management board, composed of Msrs Dr Wolfgang Ziebart (CEO), Peter Bauer, Peter J. Fischl and Dr Andreas von Zitzewitz, unanimously took the following resolutions:

1. The execution, delivery and performance of the so-called Plea Agreement between Infineon Technologies AG (the "Corporation") and the United States Department of Justice, in substantially the form of the presented draft, as appended hereto as Annex 1, is hereby approved.
2. Mr Robert LeFort, President of Infineon Technologies North America Corp., and Mr Greg Bibbes, General Counsel of Infineon Technologies North America Corp., are hereby authorized and directed to execute and deliver, each individually, in the name and on behalf of the Corporation, the Plea Agreement.
3. Mr Robert LeFort and Mr Greg Bibbes may represent – each individually - the Corporation at any hearing in order to waive any and all rights of the Corporation referred to under section 2 of the Plea Agreement and to plead guilty in accordance with the provisions of the Plea Agreement in the name and on behalf of the Corporation.
4. Mr Robert LeFort and Mr Greg Bibbes are hereby authorized and empowered to take – each individually - any and all actions required or appropriate in order to carry out the intent and purpose of the preceding resolutions.

The above resolutions are hereby written down in accordance with the rules of procedure of the management board.

Munich, September 6, 2004



Dr Wolfgang Ziebart