



\_\_\_\_\_, 20\_\_

Dear Madam / Sir:

This letter agreement (the "Agreement") confirms and memorializes Micron Semiconductor Israel Ltd. ("Seller's") agreement to sell, \_\_\_\_\_ ("Buyer's") agreement to purchase, \_\_\_\_\_ system, serial number \_\_\_\_\_ which is identified as (the "Equipment") for the sum of \_\_\_\_\_ Dollars (\$X.00) in accordance with the following terms and conditions:

1. Payment. Buyer shall make payment in full, prior to delivery. Seller may terminate this Agreement for any or no reason, with no liability whatsoever to Buyer, at any time until full payment is received. Payment shall be made in US Dollars by wire transfer to: **Micron Semiconductor Israel Ltd. HSBC BANK PLC, Tel Aviv, Bank code 23, Branch code 101, Account number 021905500 Tel Aviv, Bank Number 22, Branch Number 001, IBN# IL9602310101021905500, Acct# 021905500, SWIFT: HSBCILIT.** Buyer to include invoice number with payment. Buyer to pay all sending and receiving bank wire transfer fees.

2. Delivery and Risk of Loss. The sale of the Equipment shall be EXW (Incoterms 2010) Seller's premises at the Micron Semiconductor Israel Ltd. fabrication facility in Kiryat Gat, Israel ("Site"). Seller's liability for the Equipment shall cease and title and all risk of loss or damage shall pass to Buyer upon Seller making the Equipment available to Buyer regardless of any provision for payment of freight, insurance or the form of shipping documents. Equipment held by Seller past the specified date for Buyer shall be at Buyer's risk and expense. Buyer is responsible for shipment and for clearing the Equipment for export and shall pay all transportation, export, customs and insurance costs.

3. Inspection. Buyer has had full opportunity to physically inspect the Equipment prior to entering into this Agreement. Buyer acknowledges and agrees that to the extent it elects not to physically inspect the Equipment that Buyer hereby expressly waives any rights it may have, if any, to seek any recourse for any claim that such inspection would have revealed.

4. **NO WARRANTY. THE EQUIPMENT IS USED AND IS SOLD "AS IS", WITH ALL FAULTS, DEFECTS AND WITHOUT ANY WARRANTY OF ANY KIND. SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE.**

**ALL SOFTWARE, IF ANY, IS SOLD "AS IS" AND WITHOUT WARRANTY OF ANY KIND. SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED ON SOFTWARE, INCLUDING BUT NOT LIMITED TO, NONINFRINGEMENT OF THIRD PARTY RIGHTS, AND ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR**

**FITNESS FOR A PARTICULAR PURPOSE. SELLER DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SOFTWARE WILL MEET BUYER'S REQUIREMENTS, OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE.**

**NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY SELLER OR AN AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY. BUYER ACCEPTS THE RISKS OF USE AND EXCEPT AS OTHERWISE STATED HEREIN SUCH RISKS FALL SOLELY ON BUYER.**

**BUYER EXPRESSLY UNDERSTANDS AND AGREES THAT SELLER DOES NOT WARRANT THAT THE EQUIPMENT OR SOFTWARE IS FREE OF CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT BY ANY THIRD PARTY. SELLER HEREBY DISCLAIMS ANY SUCH WARRANTY OR INDEMNIFICATION AGAINST INTELLECTUAL PROPERTY INFRINGEMENT, INCLUDING BUT NOT LIMITED TO PATENT, TRADEMARK, COPYRIGHT OR TRADE SECRET INFRINGEMENT.**

**5. LIMITATION OF LIABILITY. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES RESULTING FROM SELLER'S PERFORMANCE OR FAILURE TO PERFORM UNDER THIS SALE, OR THE FURNISHING, PERFORMANCE OR USE OF ANY EQUIPMENT OR SOFTWARE SOLD PURSUANT HERETO, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, THE NEGLIGENCE OF SELLER, OR OTHERWISE.**

6. Software Licensing. This is a sale of hardware items only and does not include a sale or license of program code (software) in any form, regardless of whether such software has been packaged with, integrated into or otherwise included with the Equipment. Any software included with the Equipment may be the property of a third party. Buyer agrees to destroy all such software or to obtain an appropriate license for its continued use.

7. Indemnification. Buyer, on behalf of itself and its employees and agents, shall indemnify, defend and hold harmless Seller, its subsidiaries and affiliates and their directors, officers, agents and employees from and against any and all liabilities, claims, demands, damages, causes of action, losses, expenses and attorney's fees, whether known or unknown, arising out of the Buyer's purchase, use or resale of the Equipment.

8. Governing Law and Jurisdiction. The validity, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of Israel without giving effect to such country's conflict of laws rules or principles. The parties hereto hereby expressly acknowledge and agree that the United Nations Convention on Contracts for the International Sale of

Goods shall not apply to the rights and obligations of the parties under this Agreement or the interpretation of the terms and conditions of this Agreement. The parties hereto agree that the competent courts of Tel Aviv shall have exclusive jurisdiction over any dispute and/or claim relating to this Agreement.

9. Acceptance and Performance. Time is of the essence in the execution and performance of this Agreement. Buyer shall have this Agreement executed by a duly authorized representative of Buyer and return it to Seller within ten (10) days of the date first set forth above. Buyer shall take delivery of the Equipment within fifteen (15) days of the date first set forth above.

10. Taxes. Unless otherwise stated on the face hereof, stated prices do not include any customs duties, sales, use, value added, excise, goods and services, federal, state, local or other similar taxes. All such duties or taxes shall be paid by Buyer, or, in lieu thereof, Buyer shall provide Seller with an appropriate resale or exemption certificate.

11. Force Majeure. Seller shall not be responsible, in any manner, for any failure or delay in the performance of any of its obligations hereunder caused by a strike, lockout or other industrial disturbance, act of public enemies (including terrorism), any government action, any civil or military action, insurrection, riot, landslide, hurricane, drought, fire, earthquake, explosion, flood, storm, act of God, or any other similar or dissimilar cause or event not reasonably within Seller's control.

12. Assignment. Buyer shall not assign, delegate or subcontract this Agreement or any obligations hereunder without Seller's prior written consent. Any such attempted assignment or delegation without Seller's prior written consent shall be void and of no force or effect and, at Seller's option, shall be cause for Seller's termination of this Agreement.

13. Export Control Law. Buyer warrants and represents that it will not export any Equipment (and associated technical data or software, if any) that is the subject the subject of this Agreement, whether directly or indirectly, without first obtaining all licenses and other approvals required for such export under United States law and/or other applicable foreign country law. This includes the licensable release of Equipment (and associated technical data or software, if any) to a foreign national from a restricted country.

14. Terms and Conditions. This sale is subject to, and Seller's acceptance is conditioned upon, Buyer's assent to the terms and conditions stated herein and on the face hereof, which are in lieu of and replace any and all terms and conditions set forth in any documents issued by Buyer, including, without limitation, purchase orders and specifications. ANY ADDITIONAL, DIFFERENT, OR CONFLICTING TERMS AND CONDITIONS ON ANY SUCH DOCUMENT ISSUED BY BUYER AT ANY TIME ARE HEREBY OBJECTED TO BY SELLER, AND ANY SUCH DOCUMENT SHALL BE WHOLLY INAPPLICABLE TO ANY SALE MADE HEREUNDER AND SHALL NOT BE BINDING IN ANY WAY ON SELLER. No remedy set forth herein shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity. The prevailing

party or parties to any litigation or other proceedings arising out of this Agreement shall be entitled to recover its reasonable costs and attorneys' fees from the other party or parties. If it is determined by a court of competent jurisdiction as part of a final nonappealable ruling, government action or binding arbitration that any provision of this Agreement (or part thereof) is invalid, illegal, or otherwise unenforceable, such provision shall be enforced as nearly as possible in accordance with the state intention of the parties, while the remainder of this Agreement shall remain in full force and effect and bind the parties according to its terms. All section headings herein are for convenience only and are in no way to be construed as part of this Agreement or as a limitation or expansion of the scope of the particular sections to which they refer. No modification of, or amendment to, this Agreement (including any implied waiver) shall be effective unless in writing signed by all parties hereto. This Agreement sets forth the entire agreement and understanding of the parties with respect to the subject matter hereof and merges all prior or contemporaneous agreements and understandings (whether written, verbal or implied) of the parties with respect thereto.

Please have a duly authorized Buyer representative sign below and fax the signed Agreement to Jeff Anderson at 208-368-4430, if you have any questions please contact Jeff Anderson at 208-368-3750 and send the original to the attention of the undersigned at 8000 S. Federal Way, Boise, Idaho, 83717, Mail Stop 902, within ten (10) days of the date first set forth above.

Sincerely,

Micron Semiconductor Israel Ltd. ("Seller")

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ACKNOWLEDGED AND AGREED:  
XXXXXXXXXXXXXX Inc. ("Buyer")

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

January 28, 2013  
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Date: \_\_\_\_\_