



Maintenance Service Agreement
维护服务协议

Between
由

Hynix-Numonyx Semiconductor Ltd.
海力士-恒亿半导体有限公司

And
和

ATTO CO., LTD

于

合同号 : HIS4300034980

2009年 9月30日

2009年12月31日

签订

Maintenance Service Agreement

维护服务协议

This on-site maintenance service agreement is made on SEP 1, 2008 by and between Hynix-Numonyx Semiconductor Ltd., having its principal place of business at Lot K7, Wuxi Export Processing Zone in Wuxi New District, Wuxi Jiangsu Province, China ("Customer")
本维护服务协议由主要营业地址位于中国江苏省无锡市出口加工区 K7 地块的海力士-恒忆半导体有限公司（“需方”）

和

ATTO CO.,LTD having its principal place of business at 274 , Jungang B.D 301,Banwol-Dong,Hwaseong-Si,Kyungki-do,445-973 KOREA ("Supplier").

主 要 营 业 地 址 位 于 274 , Jungang B.D 301,Banwol-Dong,Hwaseong-Si,Kyungki-do,445-973 KOREA 的 ATTO CO.,LTD (“供方”）
于 2008 年 9 月 1 日 签 订。

Whereas, Customer engages in the production and manufacture of the integrated circuit products, the application scope of the products of Customer includes but is not limited to products field such as memory, consumer products, movable products, SOC and system IC products etc.;

鉴于，需方从事集成电路产品的生产和制造，需方产品的应用范围包括但不限于存储器、消费类产品、移动、SOC 及系统 IC 等产品领域。

Whereas, Customer has purchased equipment set forth in the Schedule 1 attached here to form Supplier, and Customer desires to receive the maintenance service for such equipment and Supplier agrees to supply such maintenance service to the Customer;
鉴于，需方已从供方购买了本合同附件 1 列明的设备，并且需方希望接受供方对上述设备的维护服务，供方亦同意向需方提供此类维护服务：

NOW THEREFORE, in consideration of the above premises, the parties hereto agree as follows:

现因此，考虑到上述前提，双方约定如下：

Article 1 Purchase of Services 服务的购买

1.1 Customer agrees to purchase and Supplier agrees to furnish maintenance services at the installation site and on the equipment described in the Schedule 1 attached hereto (hereinafter called "Equipment") subject to all the terms and conditions of this Agreement.

根据本协议全部的条款和条件，需方同意购买、供方同意在设备安装地点对本合同附件 1 所约定的设备（以下简称“设备”）提供该附件约定的维护服务。

Article 2 Supplier's Obligations 供方义务

2.1 General Maintenance of Equipment 设备的常规维护

Unless otherwise expressly provided herein, Supplier shall, for the total maintenance charges set forth in Schedule 2 hereto, bear all costs of labor required to maintain the Equipment in good working order and make all necessary adjustments, replacements, and repairs during the term of this Agreement (hereinafter referred to as "maintenance period").

除非另有明确规定，本合同附件 2 中约定的总维护费用包括了本协议期间（以下简称“维护期”）维护设备处于良好工作状态的所有劳动力成本及进行所有必须的调整、替换和维修费用。

2.2 Replacement Parts 替换零件

Once it is notified to Supplier about the failure of the Equipment, whether the notice is in oral or written form, Supplier should make the decision of the truth. If there is any failure, Supplier should provide replacement parts within the stipulated time described in the Schedule 1. In principle, the on-site replacement parts should be purchased by Customer; but Supplier should provide replacement parts stock on-site free of charge as far as possible; Stock level is decided by the size and location of the system of Supplier.

一旦设备故障通知给供方，无论该通知是口头形式还是书面形式，供方应当决定该零件是否有缺陷。如果有缺陷，供方则应当在附件 1 规定的时间内提供并替换零件。原则上需方付费购买需替换的零件，但对于现场库存的替换零件，供方应当尽量免费提供。库存存货量由供方的系统大小和位置而定。

2.3 The way of Service 服务方式

For the prompt response on demand of maintenance services, Supplier shall provide Customer with on-site maintenance services according to this article for eight consecutive hours between the hours of 08:00 and 17:00. Supplier shall render such remedial maintenance services to the Customer within [48] hours (from Monday to Friday) of receiving notice from Customer that the Equipment is inoperative.

现场服务的维护期间如果供方决定现场服务是必须的，供方应在附表 2 中规定的维护期间内向需方提供即电即修的抢修维护服务。维护期间的确定是为了本协议目的而确定的周一至周五 08:00 至 17:00 之间的连续 8 小时，供方当地规定的节假日除外。供方应该在收到需方设备不能正常运作通知的[48]小时（自周一至周五）内向需方提供上述故障维护服务。

2.4 Preventive Maintenance and Upgrades 预防性维护和升级

The maintenance services include scheduled preventive maintenance based upon the specific needs of the Equipment, standard firmware and/or software upgrades developed by Supplier will be provided to the Customer. Once the upgrade is one part of the software version included in the Equipment under this agreement, Supplier shall provide the upgraded hardware and/or software for free, expenses for on-site support is included in the quotation; In case the upgrading of hardware or software is based on the request of Customer or is provided for Customer solely, small-scale upgrading expense has been included in the scheduled quotation, while for large-scale

upgrading, related expenses shall be negotiated and claimed for each upgrading item. 维护服务包括基于设备具体所需的定期的预防性维护，供方将提供升级后的固化在硬件上的软件和/或软件。当升级构成本协议设备所包含的软件版本的一部分时，供方应当将其开发的升级后的硬件和/或者软件免费提供给需方，现场支持所需的费用已包括在本合同价格里。如硬件或者软件升级是基于需方的请求或者是单独为需方提供的，小规模升级的费用包括在本合同价格里，大规模升级费用将按照每次升级单项进行另外协商费用。

2.5 Non-standard Maintenance Services 非标准的维护服务

Non-standard maintenance services mean the additional maintenance services not included in the total maintenance charges set forth in Schedule 1 hereto, including but not limited to the following. Customer shall require Supplier to provide appropriate assistance and Supplier shall support and corporate Customer whatever requested within its capacity.

非标准的维护服务是指不包括在本合同附件 1 中所约定的总维护费用之内的额外维护服务，具体包括但不限于以下情形。需方可以要求供方提供适当的协助，供方应在力所能及的情况下支持并配合需方的请求。

1. The failure of Customer to continually maintain the installation site in conformance with Supplier's specifications;
需方未能保持安装地点和供方的技术要求相一致时；
2. Without prior written consent of Supplier, Customer has modified the design of the Equipment, mechanical, electrical or electronic interconnections and the Equipment is damaged as a result therefrom;
需方未经供方事先书面同意对设备的设计、机械、电器或电子的相互连接进行修改而导致的设备运行的损坏；
3. Damage of the Equipment caused by accidental affairs or natural disasters or the negligence of, or improper use or misuse by Customer;
由于意外事件或自然灾害或需方的疏忽或者不恰当使用或者误用导致的设备的损害；
4. Damage or necessity of repair resulting from unauthorized maintenance by Customer or any third party other than Supplier or its authorized representative;
由于需方或者供方或供方授权代表以外的任何第三方的未经授权的维护而导致的损害或者必要的修理；
5. Damage or repair necessitated as a result of relocation of the Equipment without prior written consent of Supplier;
由于未经供方事先书面同意对设备的搬移而导致的损害或者必要的修理；
6. Refurbishment and overhaul of Equipment performed by Supplier at the request of Customer.
供方根据需方的要求提供的对设备进行的刷新及检查。

2.6 Supplier shall perform services requested by Customer which are not included as part of this Agreement, the parties shall determine mutually agreeable prices and terms thereof.

供方应根据需方要求提供本合同约定以外的服务，双方应协商确定相关条件与价格。

2.7 Title to all maintenance tools and spare parts used by Supplier shall remain with Supplier, except that upon installation of parts into Customer-owned equipment, title to such parts shall pass to Customer.

所有供方使用的维护工具和备件的所有权为供方所有，除非零件被安装进需方所拥有的设备中，此时零件的所有权将转为需方所有。

2.8 Supplier will furnish all labor, implement, equipment, and materials necessary to the performance of the mentioned duties, except that such dustcoat, equipment and materials are to be provided by Customer.

供方将提供所有的履行协议约定义务所需的劳动力、工具、设备和原料，但需由需方提供的如防尘服等设备和材料除外。

2.9 Supplier may use the equipment or materials provided by Customer which is necessary for the performance of the mentioned duties, but if such equipment or materials should be lost, damaged, or destroyed, Supplier will reimburse Customer for their replacement with equipment and materials of equal value, and for costs and expenses incident to such replacement.

为履行约定的义务所需时，供方可以使用需方提供的设备或材料，但如果该设备或材料被丢失、损坏或者灭失，供方应当向需方偿还和这些设备及材料价值相当的替代物及此类替代物所附带的成本和费用。
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2.10 If Customer, with Supplier's prior approval, modifies or interconnects accessories, features, attachments to the Equipment, then maintenance service shall be furnished with respect on mutual agreement between Supplier and Customer and the maintenance charge shall be negotiated and adjusted accordingly.

经供方事先同意，需方对设备进行修改或连接附件、特性或者附加装置，维护服务应当根据供方和需方的共同同意完成，根据情况维护服务费将由供需双方另外协商后进行适当的调整。

2.11 As a part of maintenance service hereunder, Supplier provides modifications which may be needed by the Equipment. Customer shall provide time and right of access to the Equipment to Supplier's personnel upon notification from Supplier that such modification is ready to be made. The time required shall be mutually agreed by Customer and Supplier. The time for material modifications to the Equipment is excluded in the normal preventive maintenance hours.

作为维护服务的一部分，供方对设备进行所需的修改。如果供方发出设备将要修改的通知，需方应提供时间并让供方人员进入现场，但修改的时间应当由供方和需方共同同意。设备重大修改的时间应当不包含在正常的预防性维护时间内。

Article 3 Customer's Obligations 需方的义务

3.1 Customer shall provide Supplier reasonable workspace, and storage space for maintenance tools and spare parts and other normal and customary establishment; 需方应向供方提供合理的工作空间、可存放维护工具和配件的仓库以及其他常用设施;

3.2 Customer shall notify Supplier's maintenance personnel immediately upon Equipment failure and shall allow Supplier access to the Equipment and the use of necessary data communications facilities and Equipment at no charge to Supplier, subject to Customer's security rules.

一旦设备出现故障需方应当立即通知供方的维护人员,并在且供方遵守需方的安全制度的前提下允许供方进入设备及免费使用必要的数据通信设施和设备。

3.3 Customer shall provide technical personnel necessary to assist Supplier with system trouble shooting.

需方应提供必要的技术人员协助供方解决系统故障。

Article 4 Charges, Payments and Taxes 费用、报酬和税收

4.1 In consideration of the Services to be performed by Supplier hereunder, Customer shall pay Supplier the total maintenance charge as in Schedule 2. All expenses are subject to review and acceptance by Customer.

作为供方完成服务的对价,需方应当依照附件 2 所列的总维护费用以及条件的约定向供方付款。所有的费用应当由需方审查并核准。

4.2 On a monthly basis, Supplier shall submit an invoice statement to Customer for compensation due to Supplier pursuant to Article 4.1. The total maintenance charge shall be divided into 12 installments; Charges for the non-standard maintenance services for that month shall be balanced in addition. As part of such monthly billing, Supplier shall include supporting documentation enumerating charges for Services performed hereunder during the preceding month as well as the job classifications worked, working report issued by the engineer of Customer, and if so requested by Customer, other reasonable supporting documentation, including receipts.

以一个月为基础,供方应当依据第 4.1 条的约定向需方提供到期应付供方费用的发票。总维护费用分为 12 期,当月发生的非标准维护费用另外结算。作为月度账单的一部分,供方应当提供相应的证明文件列举上月期间完成的服务及工作类别、工作报告,及需方工程师签收的工作报告,并且,如果需方要求,需提供其他合理的单据包括有效收据。

4.3 Customer shall pay Supplier the undisputed amount specified in each invoice within thirty (30) days following after working reports are approved by Customer. If Customer reasonably disputes any portion of a payment for working reports or invoice provided by Supplier, the amount not in dispute shall be promptly paid as described above. Customer shall, within ten (10) days of its receipt of any disputed invoice, provide Supplier with written notice substantiating Customer's dispute. Customer and

Supplier shall negotiate in good faith to promptly resolve any disputes and Customer shall make payment immediately upon such resolution.

需方应当在其核准服务相关材料后的 30 日内向供方支付每笔发票无争议的金额。如果需方对供方寄送的材料或发票中的任何部分存有合理的争议，不存在争议的金额应当如上所述立即支付。需方应当在其收到任何有争议的发票 10 日内向供方提供带有证明需方存有争议的书面通知。需方和供方应当友好协商以立即解决任何存在的争议，并且，需方应当在争议解决时立刻支付该月服务费用。

4.4 Supplier shall be responsible for the payment of all employee related taxes and other costs associated with this Agreement including, but not limited to, wages, social security fees, withholding income taxes and workers compensation charges, etc.

供方应当负责支付本协议相关的所有雇员的相关税收和其他费用，包括但不限于员工工资、社会保险费、扣缴的所得税和工人补偿费用等。

4.5 The payments paid by Customer to Supplier include taxes. Except for the taxes or duties which should be born by Customer based on the laws and regulations of the People's Republic of China, Supplier shall pay any and all state, or local taxes or duties imposed by the laws and regulations of the People's Republic of China in respect of the payments made under this Agreement or otherwise arising out of this Agreement.

需方向供方支付的报酬为含税价，除中华人民共和国法律法规规定应由需方承担的税费和关税外，供方应承担中华人民共和国法律法规就本协议或履行本协议产生的付款而征收的任何和所有国家的或地方的相关税费和关税。

Article 5 Performance and Warranty 履行和保证

5.1 Supplier represents and warrants that it has the qualifications required by the law, if any, capability and experience to perform the Services and neither Supplier, nor any employees or sub-contractors is party to any contract or agreement of whatever nature which in any way prohibits, prevents or interferes with its performance of its obligations hereunder.

供方声明并保证其具有法律要求的资质（如有）、资格和经验完成服务，供方、其任何雇员或分包人中的任何一方不成为以任何方式妨碍、阻止或妨害履行其义务的任何性质的合同或协议的一方。

5.2 Supplier warrants that its Services performed hereunder shall comply with the provisions of this Agreement, and shall be performed in accordance with the highest professional standards, and shall meet the specification set forth in Schedule 1. If Customer determines, in its sole discretion that the Services are performed violating the foregoing warranties, Supplier shall, upon receipt of written notice of such defects, promptly furnish, at no additional cost to Customer, such remedial Services necessary to correct such defects, deficiencies or non-performance, and cause Services to comply fully with the foregoing warranties.

供方保证按照本协议的规定、根据最高的专业标准和满足附件 1 所述的规格完成他们的服务。如果需方依据自身的判断并确定已完成的服务违反前述保证的，供方应当在收

到缺陷书面通知时立刻向需方提供无额外费用的必要的补救服务以纠正缺陷、不足或不履行，并促使服务完全符合前述保证。

Article 6 Confidential Information 信息保密

6.1 Supplier hereby agrees (i) to hold the Customer's Confidential Information in strict confidence and to take reasonable precautions to protect such Confidential Information, (ii) not to divulge any such Confidential Information or any information derived therefrom to any third person; (iii) not to make any use whatsoever at any time of such Confidential Information except as contemplated hereunder, (iv) not to copy or reverse engineer any such Confidential Information, and (v) that any employee, subcontractor, or agent given access to any such Confidential Information must have a legitimate "need to know" and shall be bound in writing to comply with the Receiving Party's confidentiality obligations, whether generally or specific to this Agreement. All restrictions and obligations on Supplier under this section shall survive for five (5) years from the expiration or termination of this Agreement.

供方特此同意：(i) 对需方的秘密信息严格保密，并采取合理的预防措施保护这些机密信息；(ii) 不向任何第三人泄露此类机密信息或其派生的任何信息；(iii) 除了下文另有考虑，不得在任何时间使用任何此类机密信息；(iv) 不得复制任何此类机密信息或进行逆向工程；和(v) 被允许接触这些机密信息的任何雇员、分包商或代理人必须有合法的“必须知道”理由，且应以书面方式遵守接受方的保密义务，无论是以一般协议方式，还是仅针对本协议。本条规定的对供方的所有限制和义务将在本协议期满或终止后的五（5）年内仍然有效。

6.2 Notwithstanding any provision in this Agreement to the contrary, Supplier may disclose Confidential Information of Customer to the extent it is required to be disclosed pursuant to a valid order or requirement of a governmental agency or court of competent jurisdiction, provided that Customer shall be given reasonable notice of the pendency of such order or requirement and the opportunity to contest it.

尽管有与本协议相反的任何规定，供方可以依照一个政府机构或拥有合法管辖权的法院的合法命令或要求依照其要求的范围披露需方的机密信息，但条件是应合理告知需方此命令或要求并给予抗辩的机会。

6.3 Information will not be considered confidential (1) to the extent that it is or becomes public knowledge through no fault or negligence of Supplier, (2) which is rightfully disclosed by some third party, or (3) which is already known to Supplier and has not been obtained in confidence from the other party prior to the date of this Agreement.

以下信息将不被视为保密信息(1)非由于供方的过失或过错而使该信息成为公知信息；(2)被第三方正当披露的，或(3)在本协议签订日期之前供方已经知晓的，并且从不承担保密义务的另一方获取的。

6.4 Information given by Supplier to Customer will not be considered of a confidential nature, regardless of how designated. Customer will be required to hold confidential only Customer from time to time agrees in writing to so hold. Supplier shall

designate in writing all information transferred pursuant to such agreement that Supplier believes to be proprietary, and Customer shall protect such information in the same manner as Customer protects Customer's own proprietary information. All restrictions and obligations on Customer under this section shall survive for five (5) years from the expiration or termination of this Agreement.

供方提供给需方的信息将不被视为保密信息，无论该种信息是如何提供的。此类供方信息只有在需方不时以书面同意保密时需方才需保守秘密。供方应当以书面形式指明基于本协议提供的所有供方认为系供方专有的信息，并且需方应当以保护自己专有信息相当的方式保护上述信息。本条规定的对需方的所有限制和义务将在本协议期满或终止后的五（5）年内仍然有效。

Article 7 Furnishing of Insurance 保险的提供

7.1 During the term of this Agreement, Supplier will carry and maintain in full force insurance of the following types and minimum amounts insured by the insurance company acceptable to Customer insuring Supplier and Customer while Supplier is performing duties under this Agreement: [type and amount of insurance]

在本协议的期间内，当供方在履行本协议项下义务时，供方将执行并维持下列类型和最低数额的经需方同意的保险公司签发给供方和需方的全额保险：【保险类型和数额】

7.2 Customer, in writing, may designate higher or lower limits for such insurance and Supplier will thereupon procure and maintain in full force such insurance in the amount so designated.

需方可以以书面形式指定更高或者更低的保险限额，供方将因此尽全力购买并维持指定限额的保险。

7.3 Supplier will cause the insurance company to furnish Customer with certificates of such policies detailing the coverage, such certificates to be delivered to Customer concurrently with execution of this Agreement by Supplier.

供方将要求保险公司向需方提供载明保险单细节的证书，该证书将在本协议签署的同时由供方交付给需方。

7.4 Supplier should make appropriate endorsement to the insurance policy of the insurance company and will provide 30 days prior notice before the termination or change of the insurance policy.

供方应当对保险公司的保险单作适当背书并将在保险单终止、变更前 30 天通知需方。

7.5 If Supplier does not obtain the described insurance, or if Customer is not furnished at the time specified with the requisite insurance certificates, or if the described insurance is terminated, altered, or changed in a manner not acceptable to Customer, this Agreement may be terminated by Customer.

如供方没有投保所述保险，或者需方没有在规定的时间内获得所必需的保险证书，或者所述保险以需方不能接受的方式终止、变更或者改变时，需方可以终止本协议。

Article 8 Indemnification 赔偿

8.1 Supplier shall indemnify, defend and hold Customer, its officers, directors, agents, employees, successors and customers harmless against any and all claim, liabilities, damages, settlements, costs and expenses (including attorney's fees) made against or sustained by Customer arising from: (i) any of Supplier's act, omissions or obligations in this Agreement, (ii) infringement or violation of a Third Party Right, or (iii) the negligence or willful misconduct of Supplier or any subcontractors, agents, employees; (iv) Supplier's breach of any of its representations and warranties under this Agreement; (v) Supplier's failure to pay or provide any benefits or fulfill any conditions of employment as may be required under any state, or local statute; (vi) Supplier's failure to collect, withhold, or pay any and all local or state taxes required to be withheld or paid by employers or employees, including, without limitation, any and all income tax, social security.

供方应赔偿需方并使需方及其官员、董事、代理人、员工、继任者和客户免受如下行为产生的对需方提起或由需方承担的权利请求、责任、赔偿金、和解、成本和费用（包括律师费）：（1）供方的任何行为、疏忽或本协议规定的义务，（2）侵犯或违反第三方权利，或（3）供方或任何分包商、代理人、职员的过失或故意的不当行为；（4）供方违反任何其在本协议项下的声明或保证；（5）供方未能依照国家或当地规定的要求，支付或提供员工待遇或履行聘用的条件；（6）供方未能收取、预提或支付任何和所有应由用人单位或员工支付的国家和地方的税收，包括但不限于任何及所有的所得税、社会保险。

8.2 In case Supplier's attitude is of remissness or negligence, Customer shall issue a warning in writing or by e-mail. If Supplier do not amend or improve its service after being warned more than 3 times (including 3), Customer shall have the right to request the compensation equivalent to 10 percent to 20 percent of current monthly service fee, the actual compensation shall be negotiated and determined by both parties.

如供方服务态度怠慢、疏忽，需方将以书面或邮件的方式向供方发出警告。如警告超过3次（包括3次）未见供方修正或改善，需方有权向供方要求相当于当月服务费的10%~20%的赔偿，具体赔偿额由双方协商确定。

Article 9. Limitation of Liability 责任范围

9.1 Notwithstanding anything in this agreement to the contrary, in no event shall Customer, its officers, directors, affiliates or employees, be liable to Supplier or any other person for any special, indirect, incidental, or consequential damages or any kind including, but not limited to, loss of profits or damages to business reputation however caused and on any theory of liability, whether in an action for contract, strict liability or tort (including negligence) or otherwise, whether or not Customer has been advised the possibility of such damage.

即使本协议有相反的规定，在任何情形下需方及其官员、董事、附属公司或员工决不对供方或任何第三人负责任何特殊的、间接的、偶然的或间接损失或其他包括但不限于因合同、严格责任或侵权行为（包括过失）或其他原因的诉讼和基于责任理论所导致的利润损失或商誉损失，不论需方是否被告知此类损害赔偿的可能性。

Article 10. Term and Termination 期限和终止

10.1 This Agreement shall commence on the Effective Date and expire on 31st August 2009. notwithstanding the expiration of this Agreement, Supplier's warranties contained in Article 5 hereof shall remain in full force and effective pursuant to such terms.

本协议应当自生效日开始 2009 年 8 月 31 到期。尽管本协议到期，第 5 条所含的供方的保证责任应当依据该条款依然有效。

10.2 Customer may suspend or terminate the performance of the Services hereunder, in whole or in part, upon 30 days prior written notice to Supplier. If Customer elects to terminate this Agreement, Supplier shall be paid for reasonable costs incurred in the performance of the Services through the effective date of termination in accordance with Article 4 hereof.

经提前 30 日书面通知供方，需方可全部或部分地中止或终止服务的执行。如果需方选择终止本协议，需方应当按照第 4 条支付供方从开始服务到终止日产生的合理费用。

Article 11. Independent Service Provider 独立服务商

11.1 Customer and Supplier expressly agree and understand that Supplier is an independent contractor and nothing in this Agreement nor the Services rendered hereunder is meant, or shall be construed in any way or manner, to create between them a relationship of employer and employee, principal and agent, partners or any other relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of the Agreement. Supplier is not the agent of Customer and is not authorized and shall not have the power or authority to bind Customer or incur any liability or obligation, or act on behalf of Customer. At no time shall Supplier represent that it is an agent of Customer, or that any of the views, advice, statements and/or information that may be provided while performing the Services are those of Customer.

需方和供方明确同意和理解供方是一个独立的订约方，本协议中和此处提供的服务均不意味或被以任何方式或形式解释为它们之间为一种雇主和雇员、本人和代理人、合伙人或其他任何除了仅为实现本协议条款目的之独立订约方以外的关系。供方不是需方的代理人，未被授权也不应有权或权限约束需方或承担任何责任或义务，或代表需方。在任何时候，供方不应当声称其为需方的一名代理人，或在履行服务时可能提供的意见、建议、陈述和/或信息中声称是需方的代理人。

Article 12 Force Majeure 不可抗力

12.1 Force Majeure shall mean any event or condition, not existing as of the date of signature of this Agreement, not reasonably foreseeable as of such date and not reasonably within the control of either party, which prevents in whole or in material part of the performance by one of the parties of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such

performance commercially unreasonable. Without limiting the foregoing, the following shall constitute events or conditions of Force Majeure: acts of state or governmental actions, riots, disturbances, war, strikes, lockouts, slowdowns, prolonged shortage of energy suppliers, material shortages, epidemics, fire, flood, earthquake, lightning, and explosion.

不可抗力是指本协议签署时不存在的、不能合理预见的及任何一方不能合理控制的、阻止一方履行全部或主要的本协议项下的义务或使履行协议义务异常困难或高成本并使该种履行没有合理商业价值的任何事件和条件。不受上述限制，以下事件或条件将构成不可抗力：国家行为、政府行动、暴乱、骚动、战争、罢工、停工、能源供应的拖延短缺、材料短缺、流行病、火灾、水灾、地震、雷击和爆炸。

12.2 Upon giving notice to the other party, a party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any amounts due and owing hereunder, but only to the extent and only for the period that performance of such obligations is prevented by the event of Force Majeure. Such notice shall include a description of the nature of the event of Force Majeure, and its cause and possible consequences. The party claiming Force Majeure shall promptly notify the other party of the termination of such event. During the period that the performance by one of the parties of its obligations under this Agreement has been suspended by reason of any event of Force Majeure, the other party may likewise suspend the performance of all of its obligations hereunder to the extent that such suspension is commercially reasonable.

一旦通知到达另一方，除支付到期应付款项的义务外，受不可抗力影响的一方将免除其依据本协议履行所承担的义务的法律责任，但仅限于且仅在不可抗力阻止履行义务的范围和期限内，该通知应该包括不可抗力事件性质的描述，其原因和可能的结果。主张不可抗力的一方应在事件终止后立即通知另一方，在因为不可抗力事件的原因一方依据本协议的义务中止履行的期间内，另一方在商业上的合理范围内，同样中止履行其所有的义务。

12.3 Should the period of Force Majeure continue for more than thirty [30] consecutive days, either party may terminate this Agreement without liability to the other party, except for payments due to such date, upon giving written notice to the other party.
如不可抗力持续的时间超过三十（30）天的，任何一方可在书面通知另一方后终止本协议且无需向对方承担责任，但支付到期应付款项除外。

Article 13 Non-Assignment 不得转让

13.1 No right or obligation under this Agreement may be assigned by Supplier without the prior written consent of Customer, and any purported assignment without such consent shall be void. Customer may assign this Agreement to a subsidiary or any acquirer of all or substantially all of Customer's stock, business assets whether by merger, acquisition or otherwise.

未经需方的事先书面同意，本协议下的任何权利或义务不可以被供方转让，任何声称的转让均为无效。需方可以通过合并、购并或其他方式将本协议转让给一个附属公司，

或全部转让至任何让与者或实质性地转让需方的股权和营业资产。

Article 14 Non-Waiver 不弃权

14.1 The failure of either party to assert any of its rights hereunder including, but not limited to, the right to terminate this Agreement for default, shall not be deemed to constitute a waiver by that party thereafter to enforce each and every provision of this Agreement in accordance with its terms.

任何一方未能主张其本协议项下的任何权利，包括但不限于因违约而终止合同的权利，不应被视为和构成该方对本协议条款项下权利主张的弃权。

Article 15 Notice 通知

15.1 All notices required or permitted under this Agreement shall be in writing, reference this Agreement and be deemed given when (a) delivered personally; (b) when sent by confirmed facsimile; (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the addresses set forth above or such other addresses designated by the respective parties from time to time.

本协议下的所有要求或认可的通知应当为书面形式，参照本协议并在以下时间被视为给付：(a) 个人交付；(b) 通过确认传真发送时；(c) 已经通过挂号信、回执邮寄、邮资已付邮件发送后五（5）日。所有邮件均应寄送至本协议开头载明的各方地址或各方不时通知的其他地址。

Article 16 Severability 可分割性

16.1 If one or more of the provisions in this Agreement shall be invalid, illegal or unenforceable under any applicable law, the validity, legality and enforcement of the remaining provisions hereof shall not in any way be affected or impaired, except as set forth below. If a fundamental provision of this Agreement shall be invalid, illegal or unenforceable in any respect under any applicable law, the Parties shall renegotiate such fundamental provision. The renegotiation shall have the objective of placing each Party in a position as nearly equal to that had such provision not been invalid, illegal or unenforceable. If the Parties are unable to renegotiate a satisfactory resolution within three (3) months, the matter shall be submitted to arbitration as specified in Article 17 hereof.

如果在任何现行法律下本协议中的一条或多项条款无效、不合法或不能付诸实行，除了以下情形，剩余条款的有效性、合法性和可执行性不应以任何形式被影响或侵犯。如果本协议的一个基本条款在现行法律下的任何一个方面无效、不合法或不能付诸实行，各方应当再协商该基本条款。协商应当具备的目标是，让各方处于一个接近平等的位置以使该些条款未曾无效、不合法或不能付诸实行。如果各方不能在三（3）个月内协商出一个令人满意的解决方案，该项应当如第 17 条所述被提交仲裁。

Article 17 Governing Law and Dispute Resolution 管辖法律及争议解决

17.1 This agreement shall be governed and interpreted by the laws and regulations of People's Republic of China.

本协议受中华人民共和国法律法规管辖和解释。

17.2 The parties agree that, any and all disputes, claims, controversy or causes of action ("Dispute") which the parties are unable to resolve for any reason, shall be completely and finally settled by submission of any such Dispute to arbitration under the Rules of the China International Economic and Trade Arbitration Commission ('CIETAC') then in effect. Any arbitration proceeding shall take place in Shanghai Branch of CIETAC. 各方同意，因任何原因各方未能解决的任何和所有争议、权利要求、争论或诉讼理由（“争议”），应当提交至中国国际经济和贸易仲裁委员会（“CIETAC”）根据其当时有效的仲裁规则仲裁。任何仲裁应当在中国国际经济贸易仲裁委员会上海分会进行。

Article 18 Headings 标题

18.1 The headings used throughout this Agreement are inserted for reference purposes only and are not to be considered or taken into account in construing this Agreement or any terms and provisions hereof.

本协议的标题仅为参考目的而使用，不应被认为或理解成对本协议或本协议任何条款和规定的解释。

Article 19 Counterparts 副本

19.1 This Agreement may be executed in one or more counterparts, each of which will be deemed an original, and all of which will constitute the same formal instrument.

本协议可以以一份或多份副本生效，但每份将被视为原件，并且所有的副本将构成无异议的、同样的正式文件。

Article 20 Integrity Pact 廉洁约定

[~SUPPLIER~] fully acknowledges that [Customer] has been consistently exerting its best efforts to improve the transparency in its business administration, to ensure the fair competition among its suppliers, and to otherwise establish practices based on sound business ethics, which efforts include, but are not limited to, the declaration of Ethical Management as one of [Customer] management policies and the proclamation of [Customer] code of conducts. In entering into this agreement, [~SUPPLIER~] hereby promises to be bound by the followings as a part of its mutual beneficial relationship with [Customer]:

(a) [~SUPPLIER~] warrants that [~SUPPLIER~] itself has not engaged in, and any of its directors, officers, employees, shareholders, agents, any other third party acting for the benefit of [~SUPPLIER~], including without limitation, [~SUPPLIER~]'s subcontractors and advisors, and any other entity being a relative of, or an auxiliary to, any of the foregoing (hereinafter referred to as "[~SUPPLIER~] Related Entities") has not engaged in, directly or indirectly, the offer, tender or promise of pecuniary or other economic benefit in

favor of any of the directors, officers, employees, shareholders and agents of [Customer], any other third party acting for the benefit of [Customer], including without limitation, [Customer]' subcontractors and advisors, and any other entity being a relative of, or an auxiliary to, any of the foregoing (hereinafter referred to as "[Customer] Related Entities"), which benefit is not specified in this Agreement, in the course of preparation, negotiation, conclusion or performance of this Agreement. [~SUPPLIER~] further covenants that it will not, and it will cause the [~SUPPLIER~] Related Entities not, to be engaged in the aforementioned misconduct, whether directly or indirectly.

- (b) In the event that any breach of the promises, warrants or covenants set forth in the above (a) is found later, [Customer] will be entitled to terminate this Agreement without any compensation, and to refuse to award [~SUPPLIER~] any business opportunity until the lapse of five (5) years from the occurrence of such breach or three (3) years after the written notice from [Customer] of such breach, whichever comes later.
- (c) [~SUPPLIER~] confirms that in addition to the rights set forth in the above article (b) [Customer] will be entitled to other rights and remedies against [~SUPPLIER~] or [~SUPPLIER~] Related Entities which will be based on the breach as above.
- (d) Notwithstanding any other provision to the contrary, this article shall survive the expiration or earlier termination of this Agreement.

[~供方~]充分认识到[~海力士-恒亿~]一直在尽最大努力~~，包括但不限于宣告道德管理作为[~海力士-恒亿~]管理制度之一及宣布[~海力士-恒亿~]工作守则，以提高经营管理的透明度、保证[~供方~]之间的公平竞争，以及建立基于良好商业道德的惯例等。~~在缔结本协议之际，[~供方~]特此承诺将如下条款作为其与[~海力士-恒亿~]互利关系的一部分并受其约束。

- (a) [~供方~]保证其自身，任何它的董事、高级职员、雇员、股东、代理人、代表[~供应商~]利益的任何其他第三人，包括但不限于[~供方~]的转包商和顾问，任何其他与前述人员或机构有关或从属于前述机构或人员的实体（下称“[~供方~]的关联方”）在准备、谈判、缔结或履行本协议的过程中，并未直接或间接地提供、提出或承诺有利于任何[~海力士-恒亿~]的董事、高级职员、雇员、股东、代理人、代表[~海力士-恒亿~]利益的任何其他第三人，包括但不限于[~海力士-恒亿~]的转包商和顾问，任何其他与前述人员或机构有关或从属于前述机构或人员的实体（下称“[~海力士-恒亿~]的关联方”）在本协议中未予规定的金钱或其他经济利益。[~供方~]进一步承诺它不会，并将促使它的关联方不直接或间接地从事上述不当行为。
- (b) 一旦发现任何违反上述 (a) 项规定的允诺、保证或承诺的行为，[~海力士-恒亿~]将有权不进行任何补偿而终止本协议，并有权拒绝给予[~供方~]自违约发生时起五 (5) 年内或[~海力士-恒亿~]发出对该违约的书面通知时起三 (3) 年内（取期满时间较晚者）任何商业机会。
- (c) [~供方~]确认除上述 (b) 项规定的权利外，[~海力士-恒亿~]亦享有其他基于上述违约而产生的针对[~供方~]或[~供方~]的关联方的权利和救济。

(d) 即使存在任何其他相反的规定，本条款亦不因本协议的期满或提前终止而失效。

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed in duplicate by their respective duly authorized representatives as of the day and year first above written.

有鉴于此，各方已使得本协议生效，一式两份，并已由他们的各自妥善授权代表于本协议首页载明的日期签署。

CUSTOMER需方

For and on behalf of 为且代表
Hynix-Numonyx Semiconductor Ltd.
海力士 - 恒亿半导体有限公司

By由:

Typed Name姓名:

Position职位:



SUPPLIER供方

For and on behalf of 为且代表
ATTO Co., Ltd

By由:

Typed Name姓名:

Position职位:



HNSL-20080625-FB(on-site)

SCHEDULE [1]

附件[1]

服务对象、标准、范围、方式 (BASE REQUIREMENT)
Objection, standard, scope and mode of Services



1. On-Site Service Contract Base Requirement

Supplier Name	Equipment	Autography			
		Vendor	C2	Purchase	
ATTO	C-2 Thin Film CVD	Sign			
		Name	PARK, JG		
		Date	2009.11.17		

Item	Detail	Condition
1. Period	Contract Period	* From September 1, 2009 ~ December 31, 2009
2. Equipment	Model	* Model : MAHA HP2, MAHA SP
3. Engineer	No. of people	* Korean Engineers : 2 名
4. Career	Field Experience	* More than 2 years for 300mm systems
		* Qualification Certificate
5. On-Site	① Working Time	* 5 Days x 8 Hours (09:00~18:00) + On-Call
6. On-Call	② Over Time	* Extra Charge : () / Hour
	③ Weekend	* Extra Charge : () / Hour
	④ Holidays	* Extra Charge : () / Hour
7. Response Time	① Working Time	* In Hynix-Numonyx Line (Exception time for Meal and Rest)
	② Over Time	* Within 2 Hours
	③ Weekend	* Within 2 Hours
	④ Holidays	* Within 2 Hours
8. Escalation	Response Time	* Within 24 Hours in HQ
9. Parts Delivery	Local Warehouse	* Within 2 Hours
	Headquarters	* Within 48 Hours
10. Working	Scope	* Troubleshooting/Technical Support
		* Support for BM/PM & Support for Training
		* Support for Parts
11. Guarantee	Up-time	* Available up rate : more than 90%

HNSL-20080625-FB(on-site)

SCHEDULE [2]

附件[2]

TOTAL MAINTENANCE CHARGE

总维护费



Quotation

Quotation No : ATTO-SLC-2009-11-Rev1.0

■ Customer : Hynix- Numonyx

■ Quotation Name : On-Site Service Extension Contract

■ Date : November 9th, 2009

■ To : Richeng.Zhao / Manager

1. Contract Period : From Sep. 1, 2009 To Dec. 31, 2009

2. Equipment Model : MAHA HP II , MAHA SP

3. Engineers No. : Korean Eng'r : 2

4. On-Site Working Time : 5 days x 8 hours (09:00 ~ 18:00)

5. Labor Fee of On Site : US\$ 64,900 / 2 People for 4months

Day	Fee(\$) / Hr	Time	Person	Amount (US \$)		
122	120	8	2	US\$234,240		
Hynix Numonyx Special Discount		74%	US\$174,240			
Sum		US\$60,000				
Tax		US\$4,900				
Total Amount		US\$64,900				

6. On Call :

1) Over Time	Extra Charge	US\$180 / A Hour per 2 people
2) Weekends	Extra Charge	US\$180 / A Hour per 2 people
3) Holidays	Extra Charge	US\$180 / A Hour per 2 people
4) Travel Expense from Head Quarter(Korea) : Extra Charge		

7. Parts : Extra Charge

8. Working Scope : Troubleshooting / Technical Support



HNSL-20080625-FB(on-site)

SCHEDULE [3]

附件[3]

NON-STANDARD MAINTENANCE SERVICES AND COMPENSATION

非标准维护服务及费用

1. 设备移设:

因需方的需要拆迁/移动设备的服务。

2. 改造
3. 升级
4. 降级

