

**NON-DISCLOSURE AND RESTRICTED USE AGREEMENT**  
(„Agreement“)

by and between

**IPS Ltd.**  
**33 Jijae-dong, Pyongtaek,**  
**Gyeonggi-do, KOREA**

- hereinafter referred to as "SUPPLIER"

and

**Infineon Technologies SC300 GmbH & Co. OHG,**  
**Königsbrücker Str. 180, 01099 Dresden**  
**Germany**

- hereinafter referred to as „Infineon“

- both hereinafter referred to as "Party" or "Parties" -

**Effective Date: June 15, 2005**  
**Expiration Date: June 14, 2007**

**Survival Period: 5 years**

WHEREAS, the Parties intend to engage in discussions concerning Materials and Hardware needed for future DRAM products processed by ALD and ALD related techniques.

WHEREAS, in the course of such activities it is anticipated that the Parties will disclose to each other certain proprietary information for the Purpose as set forth above, which information the Parties regard as confidential;

NOW THEREFORE, the Parties agree as follows:

**1. Definitions.** "Confidential Information" shall mean any information and data, whether owned by a Party, its Affiliates or a third party obtained through a confidential arrangement, including but not limited to any kind of business, commercial or technical information and data disclosed between the Parties, such disclosure made by either a Party or a Party's Affiliate ("Discloser") to the other Party ("Recipient"), in connection with the Purpose of this Agreement, irrespective of the medium in which such information or data is embedded. Confidential Information shall include any copies or abstracts made thereof as well as any modules, samples, prototypes or parts thereof.

"Affiliate" shall mean any company in which a Party, directly or indirectly, through one or more intermediaries, owns more than fifty percent (50%) of such company's capital or equivalent voting rights. On the part of Infineon Technologies SC300 GmbH & Co. OHG, Affiliate shall additionally include Infineon Technologies AG, München, Germany and Affiliates of the latter.

**2. Manner of disclosure.** Any Confidential Information disclosed in tangible form, shall be marked as "Confidential" or with a similar legend by the Discloser prior to disclosure. Any Confidential Information disclosed orally or visually, shall be identified as such prior to disclosure and summarized in writing by the Dis-

closer to Recipient within thirty (30) days of the disclosure. In case of disagreement regarding said summary, the Recipient shall make any objections in writing within thirty (30) days of receipt of the written summary.

**3. Restrictions.** All Confidential Information delivered pursuant to this Agreement shall

(a) be used by the Recipient only for the sole Purpose of this Agreement, unless otherwise expressly agreed to in writing by the Discloser; and

(b) not be distributed, disclosed, or disseminated in any way or form by the Recipient to anyone except its own or its Affiliates' employees, who have a reasonable need to know such Confidential Information and who are bound to confidentiality by their employment agreements or otherwise not less stringent than under the obligations of this Agreement; and

(c) be treated by the Recipient with the same degree of care to avoid unauthorized disclosure to any third party as with respect to the Recipient's own confidential information of like importance but with no less than reasonable care.

**4. Exceptions.** The obligations as per Section 3 shall not apply to any information which the Recipient can prove,

(a) is at the time of disclosure already in the public domain or becomes available to the public through no breach by the Recipient of this Agreement, except that Confidential Information shall not be deemed to be in the public domain merely because any part of the Confidential Information is embodied in general disclosures or because individual features, components or combinations thereof are now or become known to the public;

(b) is received by the Recipient from a third party free to lawfully disclose such information to Recipient;

(c) was in the Recipient's lawful possession prior to receipt from the Discloser as evidenced by written documentation;

(d) is independently developed by the Recipient without the benefit of any of the Confidential Information as evidenced by written documentation;

(e) is approved for release by written agreement of the Discloser;

(f) is required to be disclosed to comply with legal mandatory regulations, a judicial or official order or decree, provided that written advance notice of such judicial action was timely given to the Discloser.

**5. Refusal.** Either Party shall have the right to refuse to accept any information under this Agreement prior to any disclosure and nothing herein shall obligate either Party to disclose any particular information.

**6. No license.** It is understood that no license or right of use under any patent or patentable right, copyright, trademark or other proprietary right is granted or conveyed by this Agreement. The disclosure of Confidential Information and materials shall not result in any obligation to grant the Recipient any rights therein.

**7. No remuneration, warranty or liability.** The Parties are not entitled to any remuneration for disclosure of any information under this Agreement. No warranties of any kind are given and no liability of any kind shall be assumed with respect to such information or any use thereof, nor shall the Discloser indemnify the Recipient against or be liable for any third party claims with respect to such information or any use thereof. The Parties shall have no obligation to enter into any further agreement with each other regarding the Purpose.

**8. Termination.** This Agreement has an Effective Date and an Expiration Date as specified above. Prior to the Expiration Date, this Agreement may be terminated with respect to further disclosures upon thirty (30) days prior notice in writing. The obligations accruing prior to termination as set forth herein, shall, however, survive termination or expiration of this Agreement for the term of the Survival Period as specified above.

**9. Ownership, Return.** All Confidential Information exchanged between the Parties pursuant to this Agreement, shall remain the property of the Discloser, and along with all copies thereof, shall upon respective request of the Discloser either be returned to the Discloser or be destroyed by the Recipient after termination of this Agreement. Such request shall be notified in writing by the Discloser to the Recipient within



ninety (90) days after termination of this Agreement. In case of destruction, the Recipient shall confirm in writing such destruction to the Discloser.

**10. No assignment.** This Agreement may not be assigned by either Party without the prior written consent of the other Party.

**11. Written form.** The provisions of this Agreement may not be modified, amended, nor waived, except by a written instrument duly executed by the Parties hereto. The requirement of written form itself can only be waived by mutual written agreement.

**12. Dispute resolution.** All disputes arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be settled finally by binding arbitration under the Rules of Arbitration of the International Chamber of Commerce, Paris ("Rules") by three arbitrators in accordance with the said Rules. Arbitration shall take place in Zurich, Switzerland whereas its procedural law shall apply where the Rules are silent. The language to be used in the arbitration proceeding shall be English.

**13. Governing law.** This Agreement shall be subject to the substantive law in force in Germany without reference to its conflicts of law provisions.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the dates specified below.

IPS Ltd.

Infineon Technologies SC300 GmbH & Co. OHG

Date:

30-05-05

Date:

T.W. Seo

By:

Name: TW Seo

Title: Chief Technology Officer

By:

Name: Haßelberg

Title: Purchasing Director

Egger

Senior Director Production