

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549

FORM 10-Q

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended July 31, 2013

or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 1-8266

**DATARAM CORPORATION**

(Exact name of registrant as specified in its charter)

**New Jersey**

(State or other jurisdiction of  
incorporation or organization)

**22-1831409**

(I.R.S. Employer Identification No.)

**P.O. Box 7528, Princeton, NJ**

(Address of principal executive offices)

**08543**

(Zip Code)

**(609) 799-0071**

(Registrant's telephone number, including area code)

(Former name, former address and former fiscal year, if changed since last report)

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.  Yes  No

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Website, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).  Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer or a non-accelerated filer. See definitions of "accelerated filer and large accelerated filer" in Rule 12b of the Exchange Act. (Check One):

Large accelerated filer  Accelerated filer  Non-accelerated filer  Smaller reporting company

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act).  Yes  No

Indicate the number of shares outstanding of each of the issuer's classes of common stock, as of the latest practicable date. Common Stock (\$1.00 par value): As of September 16, 2013, there were 1,754,662 shares outstanding.

**PART I: FINANCIAL INFORMATION**

**ITEM 1. FINANCIAL STATEMENTS.**

**Dataram Corporation and Subsidiaries  
Consolidated Balance Sheets  
July 31, 2013 and April 30, 2013**

|  | <u>July 31,<br/>2013</u> | <u>April 30,<br/>2013</u> |
|--|--------------------------|---------------------------|
|  | <u>(Unaudited)</u>       | <u>(Note 1)</u>           |
| <b>Assets</b>  |                          |                           |
| Current assets:  |                          |                           |
| Cash and cash equivalents  | \$ 107,826               | \$ 324,235                |
| Accounts receivable, less allowance for doubtful accounts and sales returns of \$200,000 at July 31, 2013 and April 30, 2013 | 3,209,632                | 2,884,653                 |
| Inventories  | 2,722,163                | 2,903,054                 |
| Note receivable, less allowance of \$275,000 at July 31, 2013 and \$0 at April 30, 2013                                      | —                        | 275,000                   |
| Other current assets   | 141,323                  | 81,283                    |
| Total current assets   | <u>6,180,944</u>         | <u>6,468,225</u>          |
| Property and equipment, at cost:   |                          |                           |
| Machinery and equipment  | 11,732,970               | 11,732,970                |
| Leasehold improvements   | 607,867                  | 607,867                   |
|  | <u>12,340,837</u>        | <u>12,340,837</u>         |
| Less: accumulated depreciation and amortization  | 11,967,197               | 11,916,197                |
| Net property and equipment   | 373,640                  | 424,640                   |
| Other assets   | 55,742                   | 55,742                    |
| Intangible assets, net of accumulated amortization   | 92,066                   | 132,966                   |
| Goodwill   | 1,083,555                | 1,083,555                 |
|  | <u>\$ 7,785,947</u>      | <u>\$ 8,165,128</u>       |
| <b>Liabilities and Stockholders' Equity</b>  |                          |                           |
| Current liabilities:   |                          |                           |
| Note payable-revolving credit line   | \$ 2,342,300             | \$ 1,876,128              |
| Accounts payable   | 1,198,599                | 947,552                   |
| Accrued liabilities  | 548,796                  | 684,509                   |
| Due to related party – current portion   | 400,000                  | 400,000                   |
| Total current liabilities  | <u>4,489,695</u>         | <u>3,908,189</u>          |
| Due to related party – long term   | 1,166,667                | 1,266,667                 |
| Total liabilities  | <u>5,656,362</u>         | <u>5,174,856</u>          |
| Stockholders' equity:  |                          |                           |
| Common stock, par value \$1.00 per share.  |                          |                           |
| Authorized 54,000,000 shares; issued and outstanding 1,754,662 at July 31, 2013 and April 30, 2013                           | 1,754,662                | 1,754,662                 |
| Additional paid-in capital   | 19,308,874               | 19,287,931                |
| Accumulated deficit  | (18,933,951)             | (18,052,321)              |
| Total stockholders' equity   | <u>2,129,585</u>         | <u>2,990,272</u>          |
|  | <u>\$ 7,785,947</u>      | <u>\$ 8,165,128</u>       |

See accompanying notes to consolidated financial statements.

**Dataram Corporation and Subsidiaries**  
**Consolidated Statements of Operations**  
**Three Months Ended July 31, 2013 and 2012**  
**(Unaudited)**

|                                     | <b>2013</b>  | <b>2012</b>  |
|-------------------------------------|--------------|--------------|
| Revenues                            | \$ 7,366,730 | \$ 7,998,485 |
| Costs and expenses:                 |              |              |
| Cost of sales                       | 5,805,044    | 6,304,447    |
| Engineering                         | 319,327      | 206,108      |
| Selling, general and administrative | 2,039,733    | 2,354,217    |
|                                     | 8,164,104    | 8,864,772    |
| Loss from operations                | (797,374)    | (866,287)    |
| Other income (expense):             |              |              |
| Interest expense, net               | (84,417)     | (71,382)     |
| Currency gain (loss)                | 161          | (38,048)     |
| Total other expense, net            | (84,256)     | (109,430)    |
| Loss before income taxes            | (881,630)    | (975,717)    |
| Income tax expense                  | —            | —            |
| Net loss                            | \$ (881,630) | \$ (975,717) |
| Net loss per share of common stock  |              |              |
| Basic                               | \$ (.50)     | \$ (.55)     |
| Diluted                             | \$ (.50)     | \$ (.55)     |

See accompanying notes to consolidated financial statements.

**Dataram Corporation and Subsidiaries**  
**Consolidated Statements of Cash Flows**  
**Three Months Ended July 31, 2013 and 2012**  
**(Unaudited)**

|   | <u>2013</u>       | <u>2012</u>         |
|---|-------------------|---------------------|
| Cash flows from operating activities:                                       |                   |                     |
| Net loss  | \$ (881,630)      | \$ (975,717)        |
| Adjustments to reconcile net loss to net cash used in operating activities: |                   |                     |
| Depreciation and amortization   | 91,900            | 100,900             |
| Bad debt expense  | 275,110           | 3,296               |
| Stock-based compensation expense  | 20,943            | 99,451              |
| Changes in assets and liabilities:  |                   |                     |
| Increase in accounts receivable   | (325,089)         | (413,617)           |
| Decrease (increase) in inventories  | 180,891           | (869,249)           |
| Increase in other current assets  | (60,040)          | (384,933)           |
| Increase in other assets  | —                 | (26,617)            |
| Increase in accounts payable  | 251,047           | 154,817             |
| Decrease in accrued liabilities   | (135,713)         | (119,903)           |
| Net cash used in operating activities                                       | <u>(582,581)</u>  | <u>(2,431,572)</u>  |
| Cash flows from investing activities:                                       |                   |                     |
| Issuance of note receivable   | —                 | (375,000)           |
| Net cash used in investing activities                                       | <u>—</u>          | <u>(375,000)</u>    |
| Cash flows from financing activities:                                       |                   |                     |
| Net borrowings under revolving credit line                                  | 466,172           | 830,397             |
| Payments under related party note payable                                   | (100,000)         | (33,333)            |
| Purchase of treasury stock  | —                 | (142,262)           |
| Net cash provided by financing activities                                   | <u>366,172</u>    | <u>654,802</u>      |
| Net decrease in cash and cash equivalents                                   | (216,409)         | (2,151,770)         |
| Cash and cash equivalents at beginning of period                            | <u>324,235</u>    | <u>3,274,741</u>    |
| Cash and cash equivalents at end of period                                  | <u>\$ 107,826</u> | <u>\$ 1,122,971</u> |
| Supplemental disclosures of cash flow information:                          |                   |                     |
| Cash paid during the period for:  |                   |                     |
| Interest  | <u>\$ 88,974</u>  | <u>\$ 71,114</u>    |
| Income taxes  | <u>\$ —</u>       | <u>\$ —</u>         |

See accompanying notes to consolidated financial statements.

**Dataram Corporation and Subsidiaries**  
**Notes to Consolidated Financial Statements**  
**July 31, 2013 and 2012**  
**(Unaudited)**

**(1) Description of Business and Significant Accounting Policies**

Dataram Corporation (“the Company”) is a developer, manufacturer and marketer of large capacity memory products primarily used in high-performance network servers and workstations. The Company provides customized memory solutions for original equipment manufacturers (OEMs) and compatible memory for leading brands including Dell, HP, IBM and Sun Microsystems. Additionally, the Company manufactures a line of memory products for Intel and AMD motherboard based servers. The Company has developed and currently markets a line of high-performance storage caching products.

The Company’s memory products are sold worldwide to OEMs, distributors, value-added resellers and end-users. The Company has one leased manufacturing facility in the United States with sales offices in the United States, Europe and Japan.

The Company is an independent memory manufacturer specializing in high-capacity memory and competes with several other large independent memory manufacturers as well as the OEMs mentioned above. The primary raw material used in producing memory boards is dynamic random access memory (DRAM) chips. The purchase cost of DRAMs is the largest single component of the total cost of a finished memory board. Consequently, average selling prices for computer memory boards are significantly dependent on the pricing and availability of DRAM chips.

**Liquidity and Basis of Presentation**

The information for the three months ended July 31, 2013 and 2012 is unaudited, but includes all adjustments (consisting of normal recurring adjustments) which, in the opinion of management, are necessary to state fairly the financial information set forth therein in accordance with accounting principles generally accepted in the United States of America. The interim results are not necessarily indicative of results to be expected for the full fiscal year. These financial statements should be read in conjunction with the audited financial statements for the year ended April 30, 2013 included in the Company’s 2013 Annual Report on Form 10-K filed with the Securities and Exchange Commission. The April 30, 2013 balance sheet has been derived from these statements

The Company's financial statements are prepared using the accrual method of accounting in accordance with accounting principles generally accepted in the United States of America and have been prepared on a going concern basis, which contemplates the realization of assets and the settlement of liabilities in the normal course of business. For the fiscal years; ended April 30, 2013, 2012, and 2011, the Company incurred losses in the amounts of approximately \$4,625,000, \$3,259,000 and \$ 4,634,000, respectively.

As discussed in Note 9, the Company entered into financing agreements to address short-term liquidity needs. The Company is in default of the net worth covenant at July 31, 2013. Also, as discussed in Note 10, on May 11, 2011, the Company entered into a securities purchase agreement with certain investors. Management believes that the aggregate \$3,500,000 available under this facility combined with current projected losses will not be sufficient to meet its current obligations and the Company will need to raise capital through borrowings or sales of equity securities. There can be no assurance that the Company will be able to obtain additional borrowings or complete a sale of equity securities.

Our continuation as a going concern is dependent upon obtaining the additional working capital necessary to sustain our operations. Our future is dependent upon our ability to obtain financing, raise capital through the sales of equity and or debt securities and upon future profitable operations. There is no assurance that our current operations will be profitable or we will raise sufficient funds to continue operating.

If current and projected revenue growth does not meet estimates, the Company may continue to choose to raise additional capital through debt and/or equity transactions, reduce certain overhead costs through the deferral of salaries and other means, and settle liabilities through negotiation. Currently, the Company does not have any commitments or assurances for additional capital, nor can the Company provide assurance that such financing will be available to it on favorable terms, or at all. These factors raise substantial doubt about the Company's ability to continue as a going concern. The financial statements do not include any adjustments relating to the recoverability and classification of recorded assets, or the amounts of and classification of liabilities that might be necessary in the event we cannot continue in existence. Management projects the Company currently has sufficient cash and borrowing availability to last into fiscal 2014's second quarter. The Company intends to raise additional capital through bank financing and the sale of equity and/or debt securities in the current fiscal year second quarter, which should provide sufficient cash and borrowing availability into fiscal 2014's fourth quarter.

### **Plan of Operation**

The Company has been experiencing losses due to the decline and instability of DRAM prices and the historical investment in XcelaSAN. It is uncertain how long the current level of DRAM pricing will continue, or whether or when prices will rise in the near future. Until such time that the Company can raise prices, it will continue to seek alternative methods of generating profits and cash flow. For example, the Company continues to pursue product diversification, either by development or as a contract manufacturer. Additionally, the Company will continue to identify joint ventures, strategic partnerships and business combination opportunities. There can be no assurance that any of these initiatives will mature to profitability and positive cash flow, or even occur. During fiscal 2013, the Company signed three agreements with AMD for the sale of AMD branded products. The products fall into three categories, RAMDisk software; consumer memory for the gaming and entertainment industries and server memory for AMD and other servers. The Company hopes to expand these three product offerings and offer them for sale through e-tailers such as Newegg, Tiger Direct, Fry's, NCIX, Ebay and others. Currently the Company is selling Radeon RAMDisk, Radeon Memory and Radeon Server Memory through Newegg and is negotiating with other e-tailers to sell products through their web sites. In addition, we intend to raise additional capital through bank financing and the sale of equity and/or debt securities in the current fiscal year. Although there can be no assurances that this will occur, if successful the proceeds could be sufficient to fund the company in expanding its consumer memory outlets and the development of software to complement RAMDisk in other areas of caching.

### **Stock Split**

On January 31, 2013, the Company filed a proxy statement with the Securities and Exchange Commission for the purpose of calling a special meeting of its stockholders. The Board of Directors asked the stockholders to approve the Board's action in effecting a reverse split of its Common Stock at a ratio of no less than 1 for 3 and no greater than 1 for 6. The meeting was held at the Company's offices on March 13, 2013. The stockholders approved the action and immediately following the meeting, the Board of Directors voted to affect a reverse split of its common stock at the ratio of 1 for 6. The split shares were effective with the opening of trading on March 15, 2013. Relevant financial data has been adjusted in this report to reflect the 1 for 6 reverse stock-split.

### **Principles of Consolidation**

The consolidated financial statements have been prepared in conformity with accounting principles generally accepted in the United States of America and include the accounts of the Company and its wholly-owned subsidiaries. All significant intercompany transactions and balances have been eliminated in consolidation.

## **Use of Estimates**

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, including deferred tax asset valuation allowances and certain other reserves and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Estimates and assumptions are reviewed periodically and the effects of revisions are reflected in the consolidated financial statements in the period they are determined to be necessary. Some of the more significant estimates made by management include the allowance for doubtful accounts and sales returns, the collectability of note receivable, the deferred income tax asset valuation allowance and other operating allowances and accruals. Actual results could differ from those estimates.

## **Engineering and Research and Development**

Research and development costs are expensed as incurred, including Company-sponsored research and development and costs of patents and other intellectual property that have no alternative future use when acquired and in which we had an uncertainty in receiving future economic benefits. Development costs of a computer software product to be sold, leased, or otherwise marketed are subject to capitalization beginning when a product's technological feasibility has been established and ending when a product is available for general release to customers. Technological feasibility of a computer software product is established when all planning, designing, coding and testing activities that are necessary to establish that the product can be produced to meet its design specifications (including functions, features and technical performance requirements) are completed.

## **Advertising**

Advertising is expensed as incurred and amounted to approximately \$45,000 in fiscal 2014's first quarter compared to approximately \$25,000 in the comparable prior year period.

## **Income Taxes**

The Company utilizes the asset and liability method of accounting for income taxes in accordance with the provisions of the "Expenses – Income Taxes Topic" of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC"). Under the asset and liability method, deferred income tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. A valuation allowance is provided when it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The Company considers certain tax planning strategies in its assessment as to the recoverability of its tax assets. Deferred income tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect on deferred income tax assets and liabilities of a change in tax rates is recognized in earnings in the period that the tax rate changes. The Company recognizes, in its consolidated financial statements, the impact of a tax position, if that position is more likely than not to be sustained on audit, based on technical merits of the position. There are no material unrecognized tax positions in the financial statements. As of July 31, 2013, the Company had Federal and state net operating loss ("NOL") carry-forwards of approximately \$23,500,000 and \$21,800,000, respectively. These can be used to offset future taxable income and expire between 2023 and 2033 for Federal tax purposes and 2016 and 2033 for state tax purposes. The Company's NOL carry-forwards are a component of its deferred income tax assets which are reported net of a full valuation allowance in the Company's consolidated financial statements at July 31, 2013 and April 30, 2013.

## **Net Loss per Share**

Basic net loss per share is computed by dividing the net loss by the weighted average number of shares of common stock issued and outstanding during the period. The calculation of diluted loss per share for the three months ended July 31, 2013 and 2012 includes only the weighted average number of shares of common stock outstanding. The denominator excludes the dilutive effect of stock options and warrants outstanding as their effect would be anti-dilutive.

The following presents a reconciliation of the numerator and denominator used in computing basic and diluted net loss per share for the three month periods ended July 31, 2013 and 2012. The July 31, 2012 amounts shown have been adjusted to reflect the reverse 1-for-6 stock split effective March 18, 2013.

|  | <b>Three Months ended July 31, 2013</b> |                      |                  |
|--|---|----------------------|------------------|
|  | <b>Loss</b>                             | <b>Shares</b>        | <b>Per share</b> |
|  | <b>(numerator)</b>                      | <b>(denominator)</b> | <b>amount</b>    |
| Basic net loss per share – net loss and weighted average common shares outstanding   | \$ (881,630)                            | 1,754,662            | \$ (.50)         |
| Effect of dilutive securities – stock options  | —                                       | —                    | —                |
| Effect of dilutive securities – warrants   | —                                       | —                    | —                |
| Diluted net loss per share – net loss, weighted average common shares outstanding and effect of stock options and warrants | <u>\$ (881,630)</u>                     | <u>1,754,662</u>     | <u>\$ (.50)</u>  |
|  | <b>Three Months ended July 31, 2012</b> |                      |                  |
|  | <b>Loss</b>                             | <b>Shares</b>        | <b>Per share</b> |
|  | <b>(numerator)</b>                      | <b>(denominator)</b> | <b>amount</b>    |
| Basic net loss per share – net loss and weighted average common shares outstanding   | \$ (975,717)                            | 1,783,884            | \$ (.55)         |
| Effect of dilutive securities – stock options  | —                                       | —                    | —                |
| Effect of dilutive securities – warrants   | —                                       | —                    | —                |
| Diluted net loss per share – net loss, weighted average common shares outstanding and effect of stock options and warrants | <u>\$ (975,717)</u>                     | <u>1,783,884</u>     | <u>\$ (.55)</u>  |

Diluted net loss per common share for the three month periods ended July 31, 2013 and 2012 do not include the effect of options to purchase 319,908 and 315,983 shares, respectively, of common stock because they are anti-dilutive. Diluted net loss per common share for the three month periods ended July 31, 2013 and 2012 do not include the effect of warrants to purchase 221,875 of common stock because they are anti-dilutive.

### Common Stock Repurchases

On December 4, 2002, the Company announced an open market repurchase plan providing for the repurchase of up to 83,333 shares of the Company's common stock. On April 10, 2012, the Company announced the additional authorization to repurchase up to 138,000 shares of the Company's common stock which at that time made the total available for purchase of up to 166,667 shares. The Company did not purchase shares in fiscal 2014's first quarter ended July 31, 2013. In fiscal 2013's first quarter ended July 31, 2012, the Company repurchased 22,944 shares for a total cost of \$142,262. The 22,944 shares purchased were cancelled in fiscal 2013. As of July 31, 2013, the total number of shares authorized for purchase under the program is 136,408 shares.

## Stock Option Expense

### a. Stock-Based Compensation

The Company has a 2001 incentive and non-statutory stock option plan for the purpose of permitting certain key employees to acquire equity in the Company and to promote the growth and profitability of the Company by attracting and retaining key employees. In general, the plan allows granting of up to 300,000 shares of the Company's common stock at an option price to be no less than the fair market value of the Company's common stock on the date such options are granted. Options granted under the plan vest ratably on the annual anniversary date of the grants. Vesting periods for options currently granted under the plan range from one to five years. No further options may be granted under this plan.

The Company also has a 2011 incentive and non-statutory stock option plan for the purpose of permitting certain key employees and consultants to acquire equity in the Company and to promote the growth and profitability of the Company by attracting and retaining key employees. No executive officer or director of the Company is eligible to receive options under the 2011 plan. In general, the plan allows granting of up to 33,333 shares of the Company's common stock at an option price to be no less than the fair market value of the Company's common stock on the date such options are granted. Options granted under the plan vest ratably on the annual anniversary date of the grants. Vesting periods for options currently granted under the plan range from one to five years. There have been 25,000 shares granted under this plan.

The Company periodically grants nonqualified stock options to non-employee directors of the Company. These options are granted for the purpose of retaining the services of directors who are not employees of the Company and to provide additional incentive for such directors to work to further the best interests of the Company and its shareholders. The options granted to these non-employee directors are exercisable at a price representing the fair value at the date of grant and expire either five or ten years after date of grant. Vesting periods for options currently granted range from one to two years.

On September 23, 2010, the Company granted Mr. Sheerr, who is employed by the Company as the General Manager of the acquired Micro Memory Bank, Inc. ("MMB") business unit described in Note 2 and is an executive officer of the Company, nonqualified stock options to purchase 16,667 shares of the Company's common stock pursuant to his employment agreement. On September 22, 2011, the Company granted Mr. Sheerr additional nonqualified stock options to purchase 16,667 shares of the Company's common stock, pursuant to his employment agreement. On July 19, 2012, the Company granted Mr. Sheerr additional nonqualified stock options to purchase 16,667 shares of the Company's common stock, also pursuant to his employment agreement. The options granted are exercisable at a price representing the fair value at the date of grant and expire five years after date of grant. The options vested in one year.

New shares of the Company's common stock are issued upon exercise of stock options.

As required by the "Compensation - Stock Compensation" Topic of the FASB, the accounting for transactions in which an enterprise receives employee services in exchange for (a) equity instruments of the enterprise or (b) liabilities that are based on the fair value of the enterprise's equity instruments or that may be settled by the issuance of such equity instruments are accounted for using a fair value-based method with a recognition of an expense for compensation cost related to share-based payment arrangements, including stock options and employee stock purchase plans.

Our consolidated statements of operations for the three months ended July 31, 2013 and July 31, 2012 include approximately \$21,000 and \$99,000 of stock-based compensation expense, respectively. These stock option grants have been classified as equity instruments and, as such, a corresponding increase has been reflected in additional paid-in capital in the accompanying consolidated balance sheets. The fair value of each stock option granted is estimated on the date of grant using the Black-Scholes option pricing model.

A summary of option activity for the three months ended July 31, 2013 is as follows:

|                                | <u>Shares</u>  | <u>Weighted<br/>average<br/>exercise<br/>price</u> | <u>Weighted<br/>average<br/>remaining<br/>contractual<br/>life (1)</u> | <u>Aggregate<br/>intrinsic<br/>value (2)</u> |
|--------------------------------|----------------|--|--|--|
| Balance April 30, 2013         | 311,575        | \$12.40  | 4.77   | \$ 15,750                                    |
| Granted                        | 0              | –  | –  | –  |
| Exercised                      | 0              | –  | –  | –  |
| Expired                        | 0              | –  | –  | –  |
| Balance July 31, 2013          | <u>311,575</u> | \$12.40  | 4.77   | \$ 15,750                                    |
| Exercisable July 31, 2013      | <u>275,658</u> | \$13.53  | 4.39   |  |
| Expected to vest July 31, 2013 | <u>296,000</u> | \$12.40  | 4.77   |  |

- (1) This amount represents the weighted average remaining contractual life of stock options in years.
- (2) This amount represents the difference between the exercise price and \$3.07, the closing price of Dataram common stock on July 31, 2013 as reported on the NASDAQ Stock Market, for all in-the-money options outstanding and all the in-the-money shares exercisable.

As of July 31, 2013, there was approximately \$40,000 of total unrecognized compensation costs related to stock options. These costs are expected to be recognized over a weighted average period of approximately five months.

#### b. Other Stock Options

On June 30, 2008, the Company granted options to purchase 8,333 shares of the Company's common stock to a privately held company in exchange for certain patents and other intellectual property. The options granted are exercisable at a price of \$15.60 per share, which was the fair value at the date of grant, were 100% exercisable on the date of grant and expire ten years after the date of grant.

#### **(2) Acquisition**

On March 31, 2009, the Company acquired certain assets of Micro Memory Bank, Inc. ("MMB"), a privately held corporation. MMB is a manufacturer of legacy to advanced solutions in laptop, desktop and server memory products. Under the terms of the agreement with MMB, the remaining portion of the purchase price was contingently payable based upon the performance of the new Company business unit to be operated as a result of the acquisition ("MMB business unit") and consisted of a percentage, averaging 65%, payable quarterly, over the subsequent four years from acquisition date of earnings before interest, taxes, depreciation and amortization of the MMB business unit. The purchase price agreement expired March 31, 2013. The net assets acquired by the Company were recorded at their respective fair values under the purchase method of accounting. The results of operations of MMB for the period from the acquisition date, March 31, 2009, through July 31, 2013 have been included in the consolidated results of operations of the Company.

### (3) Related Party Transactions

During the three month periods ending July 31, 2013 and 2012, the Company purchased inventories for resale totaling approximately \$858,000 and \$1,225,000, respectively, from Sheerr Memory, LLC (“Sheerr Memory”). Sheerr Memory’s owner (“Mr. Sheerr”) is employed by the Company as the general manager of the acquired MMB business unit described in Note 3 and is an executive officer of the Company. When the Company acquired certain assets of MMB, it did not acquire any of its inventories. However, the Company informally agreed to purchase such inventory on an as needed basis, provided that the offering price was a fair market value price. The inventory acquired was purchased subsequent to the acquisition of MMB at varying times and consisted primarily of raw materials and finished goods used to produce products sold by the MMB business unit. Approximately \$597,000 and \$438,000 of accounts payable in the Company’s consolidated balance sheets as of July 31, 2013 and 2012, respectively, is payable to Sheerr Memory. Sheerr Memory offers the Company trade terms of net 30 days and all invoices are settled in the normal course of business. No interest is paid. The Company has made further purchases from Sheerr Memory subsequent to July 31, 2013 and management anticipates that the Company will continue to do so, although the Company has no obligation to do so.

On December 14, 2011, the Company entered into a Note and Security Agreement with Mr. Sheerr. The Note provides for secured financing of up to \$2,000,000. The Company is obligated to pay monthly interest equal to 10% per annum calculated on a 360 day year of the outstanding loan balance. Principal is payable in sixty equal monthly installments, beginning on July 15, 2012. The Company may prepay any or all sums due under this Note at any time without penalty. At closing, the Company borrowed \$1,500,000 under the Note and repaid in full the \$1,500,000 due under a previous Note with Mr. Sheerr. The Company has borrowed the full \$2,000,000 available under the Note agreement. Principal amounts due under the Note are \$33,333 per month which began on July 15, 2012. For the fiscal year ending April 30, 2013, the principal amount due under the Note was \$333,333. In each of four fiscal periods from May 1, 2013 through April 30, 2017, the principal amounts due under this obligation are \$400,000. In the fiscal period from May 1, 2017 through June 30, 2017, the principal amount due on this obligation is \$66,667. Until fully paid, the Note is subordinated to the Company’s existing senior lender and Mr. Sheerr must approve any change in the Company’s existing senior lender. This provision may limit the Company’s ability to raise additional capital from such financing. Interest payable to Mr. Sheerr on July 31, 2013 was \$13,490. Interest expense recorded for Mr. Sheerr in the first quarter of fiscal 2014 was \$40,889. Interest expense recorded for Sheerr Memory in the first quarter of fiscal 2013 was \$50,824. Interest payable to Sheerr Memory at July 31, 2012 was \$16,935.

### (4) Cash and Cash Equivalents

Cash and cash equivalents consist of unrestricted cash and money market accounts.

### (5) Accounts Receivable

Accounts receivable consists of the following categories:

|   | <b>July 31,<br/>2013</b> | <b>April 30,<br/>2013</b> |
|---|--------------------------|---------------------------|
| Trade receivables                                 | \$ 3,306,164             | \$ 2,961,838              |
| VAT receivable                                    | 103,468                  | 122,815                   |
| Allowance for doubtful accounts and sales returns | (200,000)                | (200,000)                 |
|   | <u>\$ 3,209,632</u>      | <u>\$ 2,884,653</u>       |

## (6) Inventories

Inventories are valued at the lower of cost or market, with costs determined by the first-in, first-out method. Inventories at July 31, 2013 and April 30, 2013 consist of the following categories:

|                 | <b>July 31,<br/>2013</b> | <b>April 30,<br/>2013</b> |
|-----------------|--------------------------|---------------------------|
| Raw materials   | \$ 1,573,732             | \$ 1,425,386              |
| Work in process | 63,475                   | 88,603                    |
| Finished goods  | 1,084,956                | 1,389,065                 |
|                 | <u>\$ 2,722,163</u>      | <u>\$ 2,903,054</u>       |

## (7) Note Receivable

On July 30, 2012, a Convertible Senior Promissory Note was executed by and between Shoreline Memory, Inc. (“Shoreline”) and the Company whereby the Company could lend up to \$1,500,000 to Shoreline in exchange for interest payments at prime plus 3.0% and the right to convert the amount outstanding into Common Stock of Shoreline on or before its maturity date. Each time the Company advanced money under the note, the Company was granted 1% of the outstanding Common Stock of Shoreline for every \$100,000 advanced up to a maximum of 15%. This was in addition to the 15% allowable under the conversion of the note and the warrant to acquire 30% of Shoreline Common Stock. The conversion is at the rate of 1% of the outstanding Common Stock for each \$100,000 converted up to a maximum of 15%. This note had a maturity date of three years and at such time Shoreline would have had to repay the note or the Company would of had to convert the note into Common Stock. The note was secured by all the assets of Shoreline and Shoreline Capital Management Ltd. (“Shoreline Capital”) as guarantor. Also executed with the note was a warrant to purchase 30% of the outstanding Common Stock of Shoreline at the time of exercise and the warrant expires sixty days after the third anniversary of the closing of the transaction. The warrant prescribed a formula to determine the price per share at the time of exercise. If all the amounts under the note were advanced and converted and the full warrant was exercised, the Company would have owned 60% of the outstanding Common Stock of Shoreline. The note was executed simultaneously with a Master Services Agreement which details the parameters under which the Company and Shoreline would have fulfilled orders from Shoreline’s primary customer. On July 31, 2012, the Company advanced \$375,000 under the note and an additional \$375,000 on August 1, 2012. The purpose of the loan was to fund startup expenses and to prepay initial orders. On February 19, 2013, the Company received \$50,000 from Shoreline and, on February 22, 2013, the Company received an additional \$200,000 from Shoreline as a partial repayment of their loan. On March 27, 2013, the Company reached an agreement to terminate its relationship with Shoreline, at closing, the Company received an additional \$225,000 as a partial repayment of the loan in connection with the termination of all agreements with Shoreline. The promissory note bears interest at the rate of 6% and is guaranteed by Shoreline Memory, Inc., Shoreline Capital Management Ltd and Trevor Folk. All agreements with Shoreline have been terminated with the exception of the amended and restated promissory note. The remaining \$275,000 was scheduled to be repaid in accordance with the amended and restated promissory note on July 31, 2013. Shoreline Memory has defaulted on the note. Under the terms of the note, the interest rate has increased to ten percent and Shoreline, Shoreline Capital Management Ltd. and Trevor Folk are responsible for the cost of litigation and collection. The defaulted note is in litigation. The note is guaranteed by Shoreline Capital Management Ltd. and Trevor Folk. The Company will exercise its rights to collect from the three parties. The Company has fully reserved the \$275,000 balance on the amended and restated promissory note.

## (8) Goodwill and Intangible Assets

### Goodwill:

On March 31, 2009, the Company acquired the assets of MMB for cash plus contingent consideration. The excess of consideration paid over the net assets acquired is recorded as goodwill. We were obligated under the Asset Purchase Agreement to make contingent payments based on the earnings of MMB through March 31, 2013.

No impairments of intangible assets have been identified during any of the periods presented. Goodwill is tested for impairment on an annual basis and between annual tests if indicators of potential impairment exist, using a fair-value-based approach. The date of our annual impairment test is approximately March 1.

### Intangible Assets:

Intangible assets with determinable lives, other than customer relationships and research and development are amortized on a straight-line basis over their estimated period of benefit, ranging from four to five years. Research and development and customer relationships are amortized over a two-year period at a rate of 65% of the gross value acquired in the first year subsequent to their acquisition and 35% of the gross value acquired in the second year. We evaluate the recoverability of intangible assets periodically and take into account events or circumstances that warrant revised estimates of useful lives or that indicate that impairment exists. All of our intangible assets with definitive lives are subject to amortization. No impairments of intangible assets have been identified during any of the periods presented.

The Company estimates that it has no significant residual value related to its intangible assets. Acquired intangibles generally are amortized on a straight-line basis over weighted average lives. Intangible assets amortization expense for the three months ended July 31, 2013 and 2012 totaled approximately \$41,000 in each period. Intangible asset amortization is included in selling, general and administrative expense. The components of finite-lived intangible assets acquired are as follows:

|                                       | <b>Weighted<br/>Average<br/>Life</b> | <b>July 31,<br/>2013</b> | <b>April 30,<br/>2013</b> |
|---------------------------------------|--------------------------------------|--------------------------|---------------------------|
| Trade names                           | 5 Years                              | \$ 733,000               | \$ 733,000                |
| Customer relationships                | 2 Years                              | 758,000                  | 758,000                   |
| Non-compete agreement                 | 4 Years                              | 68,000                   | 68,000                    |
| Total gross carrying amount           |                                      | 1,559,000                | 1,559,000                 |
| Less accumulated amortization expense |                                      | 1,466,934                | 1,426,034                 |
| Net intangible assets                 |                                      | <u>\$ 92,066</u>         | <u>\$ 132,966</u>         |

The following table outlines the estimated future amortization expense related to intangible assets:

| <b>Year ending April 30:</b> |            |
|------------------------------|------------|
| 2014                         | \$ 132,966 |

## **(9) Financing Agreements**

On July 27, 2010, the Company entered into an agreement with a financial institution for formula-based secured debt financing of up to \$5,000,000. Borrowings are secured by substantially all assets. On March 2, 2012, the agreement was amended to reduce the amount available under the credit facility to \$3,500,000 which, according to the Company's projections, will be sufficient to allow for maximum borrowing under the formulas provided for in the agreement. On May 17, 2012, the agreement was amended and restated. The amended and restated documents reduced the interest rate to prime plus 6%, subject to a minimum of 9.25% and also not less than \$8,000 per month. The loan facility allows borrowing of 90% of eligible domestic receivables. In addition, the loan facility allows borrowing of 90% of eligible foreign receivables to a maximum of \$500,000 and 25% of eligible inventory to a maximum of 20% of the amount available on receivables. The total credit line remains at \$3,500,000 and the Tangible Net Worth covenant is \$2,000,000, measured quarterly. The Company agreed to pay an exit fee if it terminates the agreement more than 30 days prior to the one year anniversary of the amended and restated agreement. The amount of financing available to the Company under the agreement varies with the Company's eligible accounts receivable and inventory. On December 18, 2012, the agreement was amended in exchange for a fee of \$7,500 to reduce the Tangible Net Worth covenant to \$1,300,000. However, if the Tangible Net Worth falls below \$2,000,000, the amount available to borrow on inventory will be capped at \$250,000 reduced from \$500,000. At July 31, 2013 the Company's Tangible Net Worth was approximately \$757,000. The Company is not in compliance with the Tangible Net Worth covenant therefore the inventory borrowing availability was reduced to \$250,000 and the loan is now callable. Management believes that the aggregate \$3,500,000 available under this facility combined with current projected losses will not be sufficient to meet its current obligations and the Company will need to raise capital through borrowings or sales of equity securities. There can be no assurance that the Company will be able to obtain additional borrowings or complete a sale of equity securities. The Company is in default of the net worth covenant at July 31, 2013. The Company's net worth at July 31, 2013 is approximately \$757,000. At July 31, 2013, the Company had approximately \$7,000 of additional financing available to it under the terms of the agreement.

On December 14, 2011, the Company entered into a Note and Security Agreement with Mr. Sheerr who is a related party. The agreement provides for secured financing of up to \$2,000,000. The Company is obligated to pay monthly, interest equal to 10% per annum calculated on a 360 day year of the outstanding loan balance. Principal is payable in sixty equal monthly installments, beginning on July 15, 2012. The Company may prepay any or all sums due under this agreement at any time without penalty. On closing, the Company borrowed \$1,500,000 under the agreement and repaid in full the \$1,500,000 due under a previous agreement with Mr. Sheerr. The Company has borrowed the full \$2,000,000 available under this agreement. Principal amounts due under this obligation are \$33,333 per month which began on July 15, 2012. For the fiscal year ending April 30, 2013, the principal amount due under this obligation is \$333,333. In each of four fiscal periods from May 1, 2013 through April 30, 2017, the principal amounts due under this obligation are \$400,000. In the fiscal period from May 1, 2017 through June 30, 2017, the principal amount due on this obligation is \$66,667. Until fully paid, this note is subordinated to the Company's senior lender and Mr. Sheerr must approve any change in the Company's senior lender. This provision creates an additional risk factor to the Company and its ability to raise additional capital from financing. (See "Item 1A Risk Factors") Interest payable to Mr. Sheerr on July 31, 2013 was \$13,490. Interest expense recorded for Mr. Sheerr in the first quarter of fiscal 2014 was \$40,889. Interest expense recorded for Sheerr Memory in the first quarter of fiscal 2013 was \$50,824. Interest payable to Sheerr Memory at July 31, 2012 was \$16,935.

## (10) Securities Purchase Agreement

On May 11, 2011, the Company and certain investors entered into a securities purchase agreement in connection with a registered direct offering, pursuant to which the Company agreed to sell an aggregate of 295,833 shares of its Common Stock and warrants to purchase a total of 221,875 shares of its Common Stock to such investors for aggregate net proceeds, after deducting fees to the Placement Agent and other offering expenses payable by the Company, of approximately \$2,998,000. The Common Stock and warrants were sold in fixed combinations, with each combination consisting of one share of Common Stock and 0.75 of one warrant, with each whole warrant exercisable for one share of Common Stock. The purchase price was \$11.28 per fixed combination. The warrants became exercisable six months and one day following the closing date of the Offering and will remain exercisable for five years thereafter at an exercise price of \$13.56 per share. The exercise price of the warrants is subject to adjustment in the case of stock splits, stock dividends, combinations of shares and similar recapitalization transactions. The exercisability of the warrants may be limited if, upon exercise, the holder or any of its affiliates would beneficially own more than 4.99% of the Company's Common Stock. After the one year anniversary of the initial exercise date of the warrants, the Company has the right to call the warrants for cancellation for \$.006 per share in the event that the volume weighted average price of the Company's Common Stock for 20 consecutive trading days exceeds \$27.12.

## (11) Financial Information by Geographic Location

The Company currently operates in one business segment that develops, manufactures and markets a variety of memory systems for use with network servers and workstations which are manufactured by various companies. Revenues for the three months ended July 31, 2013 and 2012 by geographic region are as follows:

|   | <b>Three months<br/>ended<br/>July 31,<br/>2013</b> | <b>Three months<br/>ended<br/>July 31,<br/>2012</b> |
|---|---|---|
| United States                           | \$ 6,182,801  | \$ 5,975,204  |
| Europe                                  | 870,627   | 1,321,922   |
| Other (principally Asia Pacific Region) | 313,302   | 701,359   |
| Consolidated                            | <u>\$ 7,366,730</u>                                 | <u>\$ 7,998,485</u>                                 |

## (12) Recently Adopted Accounting Guidance

There are no new pronouncements which affect the Company.

## (13) Concentration of Credit Risk

Financial instruments that potentially subject the Company to concentration of credit risk consist primarily of cash and cash equivalents, trade receivables and note receivable. The Company maintains its cash and cash equivalents in financial institutions and brokerage accounts. To the extent that such deposits exceed the maximum insurance levels, they are uninsured. In regard to trade receivables, the Company performs ongoing evaluations of its customers' financial condition as well as general economic conditions and, generally, requires no collateral from its customers.

## **ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The Business section and other parts of this Quarterly Report on Form 10Q ("Form 10-Q") contain forward-looking statements, within the meaning of the Private Securities Litigation Reform Act of 1995, that involve risks and uncertainties. Many of the forward-looking statements are located in "Management's Discussion and Analysis of Financial Condition and Results of Operations." Forward-looking statements provide current expectations of future events based on certain assumptions and include any statement that does not directly relate to any historical or current fact. Forward-looking statements can also be identified by words such as "future," "anticipates," "believes," "estimates," "expects," "intends," "plans," "predicts," "will," "would," "could," "can," "may," and similar terms. Forward-looking statements are not guarantees of future performance and the Company's actual results may differ significantly from the results discussed in the forward-looking statements. Factors that might cause such differences include, but are not limited to, those discussed in Part I, Item 1A described in the Company's most recent Annual Report on Form 10-K under the heading "Risk Factors filed with the Securities and Exchange Commission which can be reviewed at <http://www.sec.gov>. The Company assumes no obligation to revise or update any forward-looking statements for any reason, except as required by law.

### **Executive Overview**

Dataram Corporation ("the Company") is a developer, manufacturer and marketer of large capacity memory products primarily used in high-performance network servers and workstations. The Company provides customized memory solutions for original equipment manufacturers (OEMs) and compatible memory for leading brands including Dell, HP, IBM and Sun Microsystems. Additionally, the Company manufactures a line of memory products for Intel and AMD motherboard based servers. The Company has developed and currently markets a line of high-performance storage caching products.

The Company's memory products are sold worldwide to OEMs, distributors, value-added resellers and end-users. The Company has one leased manufacturing facility in the United States with sales offices in the United States, Europe and Japan.

The Company is an independent memory manufacturer specializing in high-capacity memory and competes with several other large independent memory manufacturers as well as the OEMs mentioned above. The primary raw material used in producing memory boards is dynamic random access memory (DRAM) chips. The purchase cost of DRAMs is the largest single component of the total cost of a finished memory board. Consequently, average selling prices for computer memory boards are significantly dependent on the pricing and availability of DRAM chips.

In fiscal 2009, the Company acquired certain assets of Micro Memory Bank, Inc. ("MMB"), a privately held corporation. MMB is a manufacturer of legacy to advanced solutions in laptop, desktop and server memory products. The acquisition expanded the Company's memory product offerings and routes to market. Its products include memory upgrades for IBM, Sun Microsystems, HP and Compaq Computer Corporation ("Compaq") computer systems. MMB also markets and sells new and refurbished factory original memory upgrades manufactured by IBM, Sun Microsystems, HP and Compaq as well as factory original modules manufactured by Micron Technology, Inc. ("Micron"), SK Hynix Inc. ("Hynix"), Samsung, Elpida Memory, Inc. ("Elpida") and Nanya Technology Corporation ("Nanya"), and purchases excess memory inventory from other parties as well.

In fiscal 2013, the Company signed numerous agreements to produce products branded as AMD. These products included the Company's software product RAMDisk, and consumer memory for use in the online gaming and entertainment industries and server memory.

The Company was incorporated in New Jersey in 1967 and made its initial public offering in 1968. Its common stock, \$1 par value (the "Common Stock") was listed for trading on the American Stock Exchange in 1981. In 2000 the Company changed its listing to the NASDAQ National Market (now the NASDAQ Stock Market) where its stock trades under the symbol "DRAM." The Company's principal executive office is located at 777 Alexander Park, Princeton, New Jersey 08540, its telephone number is (609) 799-0071, its fax is (609) 799-6734 and its website is located at <http://www.dataram.com>. Proxy Statements, Annual Reports on Form 10-K, Quarterly Reports on Form 10-Q and Current Reports on Form 8-K, and all amendments thereto, are available on the Company's website free of charge.

### **Liquidity and Capital Resources**

The Company's financial statements are prepared using the accrual method of accounting in accordance with accounting principles generally accepted in the United States of America and have been prepared on a going concern basis, which contemplates the realization of assets and the settlement of liabilities in the normal course of business. For the fiscal years ended April 30, 2013, 2012 and 2011, the Company incurred losses in the amounts of approximately \$4,625,000, \$3,259,000 and \$4,634,000, respectively.

Our continuation as a going concern is dependent upon obtaining the additional working capital necessary to sustain our operations. Our future is dependent upon our ability to obtain financing, raise capital through the sales of equity and or debt securities and upon future profitable operations. In the first quarter of fiscal year 2014, the Company eliminated approximately \$900,000 of expenses on an annual basis. There is no assurance that our current operations will be profitable or we will raise sufficient funds to continue operating. The financial statements do not include any adjustments relating to the recoverability and classification of recorded assets, or the amounts of and classification of liabilities that might be necessary in the event we cannot continue in existence. These factors raise substantial doubt about the Company's ability to continue as a going concern.

As of July 31, 2013, cash and cash equivalents amounted to approximately \$108,000 and working capital amounted to approximately \$1,691,000, reflecting a current ratio of 1.4 to 1. This compares to cash and cash equivalents of approximately \$324,000 and working capital of approximately \$2,560,000, reflecting a current ratio of 1.7 to 1 as of April 30, 2013.

During the three month period ended July 31, 2013, net cash used in operating activities totaled approximately \$583,000. Net loss in the period totaled approximately \$882,000 and included a reserve of note receivable of \$275,000. Stock-based compensation expense of approximately \$21,000 was recorded and depreciation and amortization expense of approximately \$92,000. Inventories decreased by approximately \$181,000. Trade receivable increased by approximately \$325,000, the increase was primarily the result of a large shipment at the end of quarter. Accounts payable increased \$251,000 as a result of the procurement of material for the aforementioned large shipment. Accrued liabilities decreased by approximately \$136,000, and other current assets increased by approximately \$60,000.

Net cash provided by financing activities totaled approximately \$366,000 for the three month period ended July 31, 2013 and consisted primarily of proceeds from borrowings under a revolving credit facility of approximately \$466,000, more fully described in Note 10 to the consolidated financial statements. The Company also made principal payments of \$100,000 to Mr. Scheerr under the Note and Security agreement, more fully described in Note 4 to the Consolidated Financial Statements.

On July 27, 2010, the Company entered into an agreement with a financial institution for formula-based secured debt financing of up to \$5,000,000. Borrowings are secured by substantially all assets. On March 2, 2012, the agreement was amended to reduce the amount available under the credit facility to \$3,500,000 which, according to the Company's projections, will be sufficient to allow for maximum borrowing under the formulas provided for in the agreement. On May 17, 2012, the agreement was amended and restated. The amended and restated documents reduced the interest rate to prime plus 6%, subject to a minimum of 9.25% and also not less than \$8,000 per month. The loan facility allows borrowing of 90% of eligible domestic receivables. In addition, the loan facility allows borrowing of 90% of eligible foreign receivables to a maximum of \$500,000 and 25% of eligible inventory to a maximum of 20% of the amount available on receivables. The total credit line remains at \$3,500,000 and the Tangible Net Worth covenant is \$2,000,000, measured quarterly. The Company agreed to pay an exit fee if it terminates the agreement more than 30 days prior to the one year anniversary of the amended and restated agreement. The amount of financing available to the Company under the agreement varies with the Company's eligible accounts receivable and inventory. On December 18, 2012, the agreement was amended in exchange for a fee of \$7,500 to reduce the Tangible Net Worth covenant to \$1,300,000. However, if the Tangible Net Worth falls below \$2,000,000, the amount available to borrow on inventory will be capped at \$250,000 reduced from \$500,000. At July 31, 2013 the Company's Tangible Net Worth was approximately \$757,000. The Company is not in compliance with the Tangible Net Worth covenant therefore the inventory borrowing availability was reduced to \$250,000 and the loan is now callable. Management believes that the aggregate \$3,500,000 available under this facility combined with current projected losses will not be sufficient to meet its current obligations and the Company will need to raise capital through borrowings or sales of equity securities. There can be no assurance that the Company will be able to obtain additional borrowings or complete a sale of equity securities. At July 31, 2013, the Company had approximately \$7,000 of additional financing available to it under the terms of the agreement.

On December 14, 2011, the Company entered into a Note and Security Agreement with Mr. Sheerr who is a related party. The agreement provides for secured financing of up to \$2,000,000. The Company is obligated to pay monthly, interest equal to 10% per annum calculated on a 360 day year of the outstanding loan balance. Principal is payable in sixty equal monthly installments, beginning on July 15, 2012. The Company may prepay any or all sums due under this agreement at any time without penalty. On closing, the Company borrowed \$1,500,000 under the agreement and repaid in full the \$1,500,000 due under a previous agreement with Mr. Sheerr. The Company has borrowed the full \$2,000,000 available under this agreement. Principal amounts due under this obligation are \$33,333 per month which began on July 15, 2012. For the fiscal year ending April 30, 2013, the principal amount due under this obligation was \$333,333. In each of four fiscal periods from May 1, 2013 through April 30, 2017, the principal amounts due under this obligation are \$400,000. Until fully paid, this note is subordinated to the Company's senior lender and Mr. Sheerr must approve any change in the Company's senior lender. In the fiscal period from May 1, 2017 through June 30, 2017, the principal amount due on this obligation is \$66,667. Interest payable to Mr. Sheerr on July 31, 2013 was \$13,490. Interest expense recorded for Mr. Sheerr in the first quarter of fiscal 2014 was \$40,889. Interest expense recorded for Sheerr Memory in the first quarter of fiscal 2013 was \$50,824. Interest payable to Sheerr Memory at July 31, 2012 was \$16,935.

On July 30, 2012, a Convertible Senior Promissory Note was executed by and between Shoreline and the Company whereby the Company could lend up to \$1,500,000 to Shoreline in exchange for interest payments at prime plus 3.0% and the right to convert the amount outstanding into Common Stock of Shoreline on or before its maturity date. Each time the Company advanced money under the note, the Company was granted 1% of the outstanding Common Stock of Shoreline for every \$100,000 advanced up to a maximum of 15%. This was in addition to the 15% allowable under the conversion of the note and the warrant to acquire 30% of Shoreline Common Stock. The conversion is at the rate of 1% of the outstanding Common Stock for each \$100,000 converted up to a maximum of 15%. This note had a maturity date of three years and at such time Shoreline would have had to repay the note or the Company would of had to convert the note into Common Stock. The note was secured by all the assets of Shoreline and Shoreline Capital Management Ltd. ("Shoreline Capital") as guarantor. Also executed with the note was a warrant to purchase 30% of the outstanding Common Stock of Shoreline at the time of exercise and the warrant expires sixty days after the third anniversary of the closing of

the transaction. The warrant prescribed a formula to determine the price per share at the time of exercise. If all the amounts under the note were advanced and converted and the full warrant is exercised, the Company would have owned 60% of the outstanding Common Stock of Shoreline. The note was executed simultaneously with a Master Services Agreement which details the parameters under which the Company and Shoreline would have fulfilled orders from Shoreline's primary customer. On July 31, 2012, the Company advanced \$375,000 under the note and an additional \$375,000 on August 1, 2012. The purpose of the loan was to fund startup expenses and to prepay initial orders. On February 19, 2013, the Company received \$50,000 from Shoreline and, on February 22, 2013, the Company received an additional \$200,000 from Shoreline as a partial repayment of their loan. The Company reached an agreement to terminate its relationship with Shoreline. At closing, the Company received an additional \$225,000 as a partial repayment of the loan in connection with the termination of all agreements with Shoreline. The promissory note bears interest at the rate of 6% and is guaranteed by Shoreline Memory, Inc., Shoreline Capital Management Ltd and Trevor Folk. All agreements with Shoreline Memory, Inc. have been terminated with the exception of the amended and restated promissory note. The remaining \$275,000 was scheduled to be repaid in accordance with the amended and restated promissory note on July 31, 2013. Shoreline Memory has defaulted on the note. Under the terms of the note, the interest rate has increased to 10% and Shoreline, Shoreline Capital Management Ltd. and Trevor Folk are responsible for the cost of litigation and collection. The defaulted note is in litigation. The note is guaranteed by Shoreline Capital Management Ltd. and Trevor Folk. The Company will exercise its rights to collect from the three parties. The Company has fully reserved the \$275,000 balance on the amended and restated promissory note.

Future minimum lease payments under non-cancellable operating leases (with initial or remaining lease terms in excess of one year) as of April 30, 2013 are as follows:

| Year ending April 30         |                   |
|------------------------------|-------------------|
| 2014                         | \$ 295,000        |
| 2015                         | 301,000           |
| 2016                         | 293,000           |
| 2017                         | 68,000            |
| Thereafter                   | —                 |
| Total minimum lease payments | <u>\$ 957,000</u> |

The Company has no other material commitments.

## Results of Operations

Revenues for the three month period ended July 31, 2013 were approximately \$7,367,000 compared to revenues of \$7,998,000 for the comparable prior year period. The decrease in revenues from the prior year's first quarter was the result of a decrease in average selling prices of approximately 31%, attributable to a decline in the price of DRAM chips, the primary raw material used in the Company's products. The decline in average selling price was partially offset by an increase in volume of approximately 11%.

Cost of sales for the three month period ended July 31, 2013 was \$5,805,000 versus \$6,304,000 in the prior year comparable period. Cost of sales as a percentage of revenues for the fiscal quarters ended July 31, 2013 and 2012 were 79%. Fluctuations in cost of sales as a percentage of revenues are not unusual and can result from many factors, some of which are a rapid change in the price of DRAMs, or a change in product mix possibly resulting from a large order or series of orders for a particular product or a change in customer mix. The Company eliminated approximately \$283,000 of annualized expense in the fiscal 2014's first quarter, which resulted in a charge of approximately \$53,000.

Engineering expense in fiscal 2014's first quarter was \$319,000 versus \$206,000 for the same respective prior year period. The Company has recorded approximately \$129,000 of cost related to the maintenance and development of our RamDisk product in fiscal 2014's first quarter. In the prior year these cost were reflected in SG&A expense. The Company also eliminated approximately \$94,000 of annualized expense in the fiscal 2014's first quarter, which resulted in a charge of approximately \$27,000.

Selling, general and administrative expense in fiscal 2014's first quarter totaled \$2,040,000 versus \$2,354,000 in the same prior year period, a decrease of approximately \$314,000. The decrease in this year's first quarter expense would have been \$619,000, however the Company recorded non-recurring charges of \$275,000 for the reserve on the note receivable default and also approximately \$30,000 severance cost. As a result of the cost reductions the Company has eliminated approximately \$518,000 of annualized expense.

Other income (expense), net for the first quarter of fiscal 2014 totaled expense of \$84,000 versus \$109,000 of expense for the same prior year period. Other expense in fiscal 2014's first quarter consisted primarily of interest expense of \$84,000. Prior year three month other expense totaled \$109,000 and consisted of \$71,000 of interest expense and \$38,000 of foreign currency transaction losses, primarily as a result of the EURO weakening relative to the US dollar.

Income tax expense for the first quarter of fiscal 2014 and 2013 were zero. The Company utilizes the asset and liability method of accounting for income taxes in accordance with the provisions of the "Expenses – Income Taxes Topic" of the Financial Accounting Standards Board ("FASB") Accounting Standards Codification ("ASC"). Under the asset and liability method, deferred income tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. A valuation allowance is provided when it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The Company considers certain tax planning strategies in its assessment as to the recoverability of its tax assets. Deferred income tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect on deferred income tax assets and liabilities of a change in tax rates is recognized in earnings in the period that the tax rate changes. The Company recognizes, in its consolidated financial statements, the impact of a tax position, if that position is more likely than not to be sustained on audit, based on technical merits of the position. There are no material unrecognized tax positions in the financial statements. As of July 31, 2013, the Company had Federal and state net operating loss ("NOL") carry-forwards of approximately \$23,500,000 and \$21,800,000, respectively. These can be used to offset future taxable income and expire between 2023 and 2033 for Federal tax purposes and 2016 and 2033 for state tax purposes. The Company's NOL carry-forwards are a component of its deferred income tax assets which are reported net of a full valuation allowance in the Company's consolidated financial statements at July 31, 2013 and April 30, 2013.

Net loss for the first quarter of fiscal 2014 was approximately \$882,000, which compares to a loss of approximately \$976,000 in the first quarter of fiscal 2013. Fiscal 2014 first quarter net loss includes non-recurring charges of \$275,000 for the reserve on the defaulted Shoreline Memory note receivable, and approximately \$110,000 for severance cost related to the cost reductions that were initiated during the first quarter. These cost reductions should result in approximately \$900,000 in annualized savings. Net loss in fiscal 2014's first quarter would have been approximately \$497,000 without the non-recurring charges.

### **Critical Accounting Policies**

During December 2001, the Securities and Exchange Commission ("SEC") published a Commission Statement in the form of Financial Reporting Release No. 60 which encouraged that all registrants discuss their most "critical accounting policies" in management's discussion and analysis of financial condition and results of operations. The SEC has defined critical accounting policies as those that are both important to the portrayal of a company's financial condition and results, and that require management's most difficult, subjective or complex judgments, often as a result of the need to make estimates about the effect of matters that are inherently uncertain. While the Company's significant accounting policies are summarized in Note 1 of notes to consolidated financial statements included in this Annual Report, management believes the following accounting policies to be critical:

Revenue Recognition - Revenue is recognized when title passes upon shipment of goods to customers. The Company's revenue earning activities involve delivering or producing goods. The following criteria are met before revenue is recognized: persuasive evidence of an arrangement exists, shipment has occurred, selling price is fixed or determinable and collection is reasonably assured. The Company does experience a minimal level of sales returns and allowances for which the Company accrues a reserve at the time of sale in accordance with the Revenue Recognition – Right of Return Topic of the FASB ASC. Estimated warranty costs are accrued by management upon product shipment based on an estimate of future warranty claims.

Research and Development - Research and development costs are expensed as incurred, including Company-sponsored research and development and costs of patents and other intellectual property that have no alternative future use when acquired and in which we had an uncertainty in receiving future economic benefits. Development costs of a computer software product to be sold, leased, or otherwise marketed are subject to capitalization beginning when a product's technological feasibility has been established and ending when a product is available for general release to customers. Technological feasibility of a computer software product is established when all planning, designing, coding and testing activities that are necessary to establish that the product can be produced to meet its design specifications (including functions, features and technical performance requirements) are completed.

Long-Lived Assets -Long-lived assets, such as property and equipment, are reviewed for impairment whenever events or changes in circumstances indicate that the carrying amount of an asset may not be recoverable. Recoverability of assets to be held and used is measured by a comparison of the carrying amount of an asset to the estimated undiscounted future cash flows expected to be generated by the asset. If the carrying amount of an asset exceeds its estimated future cash flows, an impairment charge is recognized in the amount by which the carrying amount of the asset exceeds the estimated fair value of the asset. Assets to be disposed of would be separately presented in the consolidated balance sheets and reported at the lower of the carrying amount or fair value less cost to sell, and no longer depreciated. The Company considers various valuation factors, principally undiscounted cash flows, to assess the fair values of long-lived assets.

Income Taxes - The Company utilizes the asset and liability method of accounting for income taxes in accordance with the provisions of the Expenses – Income Taxes Topic of the FASB ASC. Under the asset and liability method, deferred income tax assets and liabilities are recognized for the estimated future tax consequences attributable to differences between the financial statement carrying amounts of existing assets and liabilities and their respective tax bases. A valuation allowance is provided when it is more likely than not that some portion or all of the deferred income tax assets will not be realized. The Company considers certain tax planning strategies in its assessment as to the recoverability of its tax assets. Deferred income tax assets and liabilities are measured using enacted tax rates in effect for the year in which those temporary differences are expected to be recovered or settled. The effect on deferred income tax assets and liabilities of a change in tax rates is recognized in earnings in the period that the tax rate changes. The Company recognizes, in its consolidated financial statements, the impact of a tax position, if that position is more likely than not to be sustained on audit, based on technical merits of the position. There are no material unrecognized tax positions in the financial statements.

Goodwill - Goodwill is tested for impairment on an annual basis and between annual tests if indicators of potential impairment exist, using a fair-value-based approach. The date of our annual impairment test is March 1. The Company has reviewed goodwill for impairment at July 31, 2013. After this review management has concluded that there is no additional impairment of goodwill.

Use of Estimates - The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, including deferred income tax asset valuation allowances and certain other reserves and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Estimates and assumptions are reviewed periodically and the effects of revisions are reflected in the consolidated financial statements in the period they are determined to be necessary. Some of the more significant estimates made by management include the allowance for doubtful accounts and sales returns, the deferred income tax asset valuation allowance and other operating allowances and accruals. Actual results could differ from those estimates.

### **ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

The Company does not invest in market risk sensitive instruments. At times, the Company's cash equivalents consist of overnight deposits with banks and money market accounts. The Company's objective in connection with its investment strategy is to maintain the security of its cash reserves without taking market risk with principal.

The Company purchases and sells primarily in U.S. dollars. The Company sells in foreign currency (primarily Euros) to a limited number of customers and as such incurs some foreign currency risk. At any given time, approximately 5% to 25% of the Company's accounts receivable are denominated in currencies other than U.S. dollars. At present, the Company does not purchase forward contracts as hedging instruments, but could do so as circumstances warrant.

### **ITEM 4. CONTROLS AND PROCEDURES**

The Chief Executive Officer and Chief Financial Officer of the Company have evaluated the effectiveness of our disclosure controls and procedures as required by Exchange Act Rule 13a-15(b) as of the end of the period covered by this report. Based on that evaluation, the Chief Executive Officer and Chief Financial Officer have concluded that these disclosure controls and procedures are effective. There were no changes in our internal control over financial reporting during the quarter ended July 31, 2013 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## **PART II: OTHER INFORMATION**

### **Item 1. LEGAL PROCEEDINGS**

The landlord for the property previously leased by the Company in Ivyland, Pennsylvania filed suit against the Company, which vacated the property at the expiration of its lease, for the Company's alleged failure to restore the property to its original condition. The landlord is currently in possession of a security deposit in the amount of \$52,000. The Company denies its liability for the restoration of the property and believes that the outcome cannot be determined at this time. After consulting with legal counsel, management estimates that any amounts ultimately due by the Company will not have a material impact on the Company's financial condition.

On July 30, 2013, the District Court Judge issued an order against the Company in favor of the landlord Ivyland Ventures, LLC. Based on the language of the lease agreement, the Court, without making any factual findings on the extent of the Company's liability, ruled that the Company is required to remove and restore the premises to condition that existed as of January 11, 2006 or pay the cost of removal and restoration of improvements made during its entire occupation. Our legal counsel has filed a motion for reconsideration of the Court's July 30<sup>th</sup> Order seeking to overturn the Court's decision. No ruling has been made on the motion for reconsideration. A teleconference was held on August 7, 2013 between the parties and the presiding judge. At the conference, dates were set for discovery and the trial was put on the calendar for September, 2014.

The landlord currently holds \$52,000 in a security deposit and has not submitted to the Company any listing or document proof of any damage suffered by the landlord. It is anticipated that this may or may not be presented, subject to examination, during the discovery phase of the case. Therefore, at this time there is no amount that is known or estimable to substantiate any additional liability above the \$52,000 already recorded.

In connection with Shoreline's default in remitting the \$275,000 payment, with interest, in accordance with the terms of the amended and restated promissory note, the Company will commence an action in the United States District Court for the District of New Jersey, against Shoreline, as the debtor, and Trevor Folk and Shoreline Capital Management Ltd, as guarantors. The action will also seek reimbursement of all costs, fees and expenses of the litigation as provided for in the note in the event of such a default.

### **Item 1A. RISK FACTORS.**

#### **Additional Risk Factors**

There have been no material changes to the Risk Factors in Item 1A of our Annual Report on Form 10-K for the fiscal year ended April 30, 2013, other than the following:

We may have limited ability to refinance our existing senior indebtedness

The Company's subordinated Note and Security Agreement with David Sheerr, an executive officer of the Company and the prior owner of our MMB business unit, provides Mr. Sheerr with the right to approve any change in our existing senior lender. In the event Mr. Sheerr does not approve a change in our existing lender, if requested, the Company may be unable to refinance its existing senior indebtedness and raise additional capital that such a refinancing could provide. The current balance under the Sheerr Note is \$1,533,334. "See Note 4- Related Party Transactions."

### **Item 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

No reportable event.

### **Item 3. DEFAULTS UPON SENIOR SECURITIES.**

No reportable event.

**Item 4. MINE SAFETY DISCLOSURES**

No reportable event.

**Item 5. OTHER INFORMATION.**

No reportable event.

**Item 6. EXHIBITS.**

| <b><u>Exhibit No</u></b> | <b><u>Description</u></b>  |
|--------------------------|--|
| 9(a)                     | Asset Purchase Agreement dated March 20, 2009, by and among Dataram Corporation, Micro Memory Bank, Inc. |
| 31(a)                    | Rule 13a-14(a) Certification of John H. Freeman.   |
| 31(b)                    | Rule 13a-14(a) Certification of Marc P. Palker.  |
| 32(a)                    | Section 1350 Certification of John H. Freeman (furnished not filed).                                     |
| 32(b)                    | Section 1350 Certification of Marc P. Palker (furnished not filed).                                      |
| 101.INS                  | XBRL Instance Document.  |
| 101.SCH                  | XBRL Taxonomy Extension Schema Document  |
| 101.CAL                  | XBRL Taxonomy Extension Calculation Linkbase Document  |
| 101.DEF                  | XBRL Taxonomy Extension Definition Linkbase Document   |
| 101.LAB                  | XBRL Taxonomy Extension Label Linkbase Document  |
| 101.PRE                  | XBRL Taxonomy Extension Presentation Linkbase Document   |

## Signatures

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

DATARAM CORPORATION

Date: September 16, 2013

By: /s/ MARC P. PALKER  
Marc P. Palker  
Chief Financial Officer

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT is entered into as of this 20 day of March, 2009, by and among Micro Memory Bank, Inc., a Pennsylvania corporation (hereinafter referred to as "Seller"), Mr. David Sheerr, individually and as sole shareholder of Seller ("Shareholder") and Dataram Corporation, a New Jersey corporation (hereinafter referred to as "Buyer").

WHEREAS, Seller is in the computer memory business (the "Business"); and

WHEREAS, Buyer is in the business of manufacturing and selling memory systems and related products; and

WHEREAS, Seller and Shareholder wish to sell to Buyer, and Buyer wishes to purchase from Seller, certain of the assets, properties, rights and claims of the Business and to assume certain liabilities related thereto, all as described herein and upon the terms and conditions and subject to certain obligations as set forth in this asset purchase agreement (the "Agreement").

NOW THEREFORE in consideration of the representations, warranties, covenants and agreements herein contained, Seller, Shareholder and Buyer agree as follows:

## Article I. THE TRANSACTION

1.1 Purchase and Sale of Assets. At Closing (as defined in Article 5.1 below), Seller shall sell, convey, transfer, assign and deliver to Buyer (or its designated wholly-owned subsidiary), and Buyer (or its designated wholly-owned subsidiary) shall purchase, accept and receive, all of Seller's right, title and interest in, to and under the Purchased Assets (as defined in Article 1.2 below).

1.2 Purchased Assets. The "Purchased Assets" are those assets of Seller to be set forth on a list prepared by Seller and delivered to Buyer on or before Closing (the "Purchased Asset List"), including but not limited to, the respective business names and trade names of Seller (including but not limited to Micro Memory Bank, Memorystore and 18004Memory), owned or licensed intellectual property and domain names, any intellectual property applications, accounts receivable, web-based systems, know-how, licenses, schematics or plans, manufacturing equipment, furnishings, special test fixtures, software programs and tools, documents and records of the business, leases, customer lists, goodwill and all other related materials and other tangible and intangible assets, but not including cash or cash equivalents or inventory.

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1.3 Assets Not Purchased under the Agreement. Any assets not expressly set forth on the Purchased Asset List are not purchased under this Agreement but shall remain the property of Seller (“Excluded Assets”). A list of such Excluded Assets shall be delivered at Closing.

1.4 Assumption of Obligations and Liabilities: Buyer shall assume those obligations and liabilities of Seller which are expressly disclosed on Seller’s financial statements (the “Financial Statements) or on the Purchase Asset List delivered to Buyer at Closing, and the Accrued Employee Benefits (all such liabilities and obligations being referred to collectively as the “Assumed Obligations”), and no others. For the avoidance of doubt, the parties expressly agree that Buyer shall not be liable for, and Buyer does not assume or agree to pay, perform or discharge, any debt, claim, lien duty, contract, tax or liability, known, unknown, contingent or otherwise, that are not so disclosed to Buyer. Seller agrees to remain responsible for any obligations not expressly assumed by Buyer hereunder (the “Retained Obligations”). Accrued Employee Benefits means (i) the COBRA benefits (described in part 6 of Subtitle B of Subchapter 1 of ERISA) required to be provided or funded by Seller to, or for the account of any of its Employees as a result of Seller’s statutory or contractual obligations, and (ii) unused vacation and sick days accrued by Seller’s employees, and set forth on **Schedule 2.1.9(a)** hereto as updated through Closing as described in Article 5.2.11 hereof.

## Article II. REPRESENTATIONS AND WARRANTIES

2.1 Seller’s and Shareholder’s Representations and Warranties. Seller and Shareholder jointly and severally represent and warrant to Buyer as of the date hereof and as of Closing, and agree, as follows:

2.1.1 Organization; Capacity. Seller is a corporation duly organized and validly existing under the laws of the State of Pennsylvania, with full power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use, and to perform all its obligations. Seller has the absolute and unrestricted right, power, authority and capacity to execute and deliver this Agreement and to perform its obligations hereunder. Shareholder has full legal capacity and authority to execute and deliver this Agreement and perform all of its obligations hereunder.

2.1.2 Authority; No Conflict. Seller has obtained (or shall, before Closing, obtain} all necessary approvals, including without limitation any required from its Board of Directors and equity holders, for the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and no further approvals of this Agreement are necessary to effectuate its terms. This Agreement constitutes the legal, valid and binding obligation of each of Seller and Shareholder, enforceable against each in accordance with its terms. Neither the execution and delivery of this Agreement by Seller, nor the consummation or performance of any of the transactions contemplated hereby by Seller, will conflict with Seller’s organizational documents or

with any agreement to which Seller is a party, or give rise to the right of any party to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any contract; or result in the imposition or creation of any encumbrance upon any of the assets owned or used by Seller. Neither the execution and delivery of this Agreement by Shareholder, nor the consummation or performance of any of the transactions contemplated hereby by Shareholder, will conflict with any agreement to which Shareholder is a party, or give rise to the right of any party to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any contract; or result in the imposition or creation of any encumbrance upon any of the assets owned by Shareholder. Neither Seller nor Shareholder will be required to give any notice to or obtain any consent from any person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated hereby, except for such notices and consents as have already been obtained, such notices and/or consents necessary to transfer any intellectual property or intellectual property applications, and any notices or consents in connection with the line of credit mentioned in Article 3.3 hereof.

2.1.3 Ownership; Title; Purchased Asset List and Financial Statements. Seller is the sole legal and beneficial owner of all of the Purchased Assets, free of any lien, claim or encumbrance, and will transfer to Buyer at Closing good and valid title to, and legal and beneficial ownership of, all of the Purchased Assets and the right to use the names "Micro Memory Bank," "Memorystore" and "18004Memory," free of any lien, claim or encumbrance. No person has a right or other option to buy or use any of the Purchased Assets. The Purchased Asset List and the Financial Statements delivered to Buyer will be true, correct and complete in all respects.

2.1.4 Share Ownership; Corporate Records. Before Closing, Seller shall provide Buyer with a true, correct and complete listing of all debt and equity interests of Seller issued and outstanding, or issuable upon the exercise of any options, warrants or similar arrangements, as well as a true, correct and complete listing of all holders of such interests. Before Closing, Seller shall provide Buyer with a true, correct and complete listing of its present officers and directors, and shall give Buyer the opportunity to review its minute books, stock record books, and other records, all of which are complete and correct in all material respects and have been maintained in accordance with sound business practices. The minute books contain accurate and complete records of all meetings held of, and corporate action taken by, the stockholders, the Boards of Directors, and committees of the Boards of Directors, of Seller.

2.1.5 Condition and Sufficiency of Assets. Each of the Purchased Assets is in good operating condition and repair, and is adequate for the uses to which they are being put, and none of such Purchased Assets are in need of maintenance or repairs, in both cases, except for ordinary, routine maintenance and repairs that are not material in nature or cost.

2.1.6 No Undisclosed Liabilities. Except as set forth in the Financial Statements and as expressly disclosed to Buyer herein, Seller has no liabilities or obligations of any nature (whether known or unknown and whether absolute, accrued, contingent, or otherwise).

2.1.7 Taxes. Seller has filed or caused to be filed on a timely basis all federal and other tax returns that are or were required to be filed by or with respect to it. Seller has paid, or made provision for the payment of, all taxes (including all taxes required to be withheld or collected) that are shown as due on such tax returns or pursuant to any assessment received by Seller with respect to such returns.

2.1.8 Legal Proceedings and Compliance with Law.

There is no lawsuit, action, suit, arbitration, administrative or other proceeding, criminal prosecution or other investigation or inquiry ("Legal Proceeding") of any federal, state, local, foreign or other governmental or quasi-governmental agency, authority, court or body or any other type of regulatory body ("Governmental Entity") that is pending or, to Seller's or Shareholder's Knowledge, threatened against Seller. There has been no Material Breach, default or violation or the occurrence of an event that with or without the passage of time or the giving of notice, or both, would constitute a Material Breach, default or violation (collectively, a "Default") under any statute, law, ordinance, regulation, order or rule of any Governmental Entity, including but not limited to those covering environmental, energy, safety, health, transportation, bribery, record keeping, zoning, antidiscrimination, antitrust, wage and hour, and price and wage control matters (collectively, "Laws"), including but not limited to Environmental Laws, applicable to Seller or the Business, and neither Seller nor Shareholder has received any written notices from any Governmental Entity regarding any alleged such Defaults applicable to Seller under any Laws. "Environmental Law" means any and all Laws, Court Orders and Governmental Permits relating to the protection of health, safety or the environment, worker health and safety, and/or governing the handling, use, generation, treatment, storage, transportation, disposal, manufacture, distribution, formulation, packaging, labeling, or Release of Hazardous Substances, whether now existing or subsequently amended or enacted, including, but not limited to: the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Hazardous Material Transportation Act, 49 U.S.C. § 1801 et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq.; the Resource Conservation and Recovery Act of 1976 ("RCRA"), 42 U.S.C. § 6901 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Occupational Safety & Health Act of 1970, 29 U.S.C. § 651 et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701 et seq.; and the Safe Drinking Water Act of 1974, 42 U.S.C. § 300(f) et seq.; and the state analogies thereto, and the regulations promulgated thereunder, all as amended or superseded from time to time; and any common law doctrine, including but not limited to, negligence, nuisance, trespass, personal injury, or property damage related to or arising out of the presence, Release, or exposure to a Hazardous Substance. There has been no Default with respect to any judgment, decree, injunction, order or ruling of any federal, state, local or foreign court,

regulatory body or other Governmental Entity that is binding on Seller, Shareholder or their respective property under applicable Law ("Court Order") applicable to Seller. For purposes of this Agreement, "Knowledge" means, with respect to a specified person, Knowledge of a particular fact or other matter if that person is actually aware of that fact or matter. Seller and Shareholder will each be deemed to have Knowledge of a particular fact or other matter only if David Sheerr has Knowledge of the fact or other matter. A "Material Breach" means any breach which (i) will have a material adverse effect on the Business of Seller, including the assets, financial condition, prospects, results of operations, liquidity, products, competitive position, customers or customer relations thereof or (ii) will, along with all other breaches of Laws, result in an aggregate liability of over \$5,000.

Without limiting the generality of Article 2.1.8 (a), to the Knowledge of Seller or Shareholder, there has not been any Environmental Condition (i) at any premises at which the Business has been conducted by Seller, any affiliate thereof or any predecessor of any of them, (ii) at any property owned, leased or operated at any time by Seller, any entity controlled by Seller or any predecessor of any of them, or (iii) at any property at which Hazardous Substances have been deposited or disposed of by or at the behest or direction of any of the foregoing, nor has Seller received notice of any such Environmental Condition. "Environmental Condition" means any condition or circumstance, including a Release or the presence of Hazardous Substances, whether created by Seller or any third party, at or relating to any such property or premises specified in any of clauses (i) through (iii) of this Article 2.1.8 (b) that (A) has required or could reasonably be expected to require abatement or correction under an Environmental Law, (B) has given or could reasonably be expected to give rise to any civil or criminal liability on the part of Seller under an Environmental Law, or (C) has created or could reasonably be expected to create a public or private nuisance. "Release" means any release, spill, emission, leaching, leaking, pumping, injection, deposit, disposal, discharge, dispersal, or leaching into the indoor or outdoor environment, or into or out of any property. "Hazardous Substances" means petroleum, petroleum hydrocarbons or petroleum products, petroleum by-products, radioactive materials, asbestos or asbestos-containing materials, gasoline, diesel fuel, pesticides, radon, urea formaldehyde, lead or lead-containing materials, polychlorinated biphenyls; and any other chemicals, materials, substances or wastes in any amount or concentration which are now or hereafter become defined as or included in the definition of "hazardous substances," "hazardous materials," "hazardous wastes," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "pollutants," "regulated substances," "solid wastes," or "contaminants" or words of similar import, under any Environmental Law.

Seller has delivered to Buyer complete copies of any written reports, studies or assessments in the possession or control of Seller, any affiliate or any agents thereof that relate to any Environmental Condition. Schedule 2.1.8 (c) identifies any other reports, studies or assessments that relate to any Environmental Condition of which Seller or Shareholder has Knowledge.

Seller has obtained and is in full compliance with all governmental permits, licenses, registrations, certificates of occupancy, approvals and other authorizations of any Governmental Entity ("Governmental Permits") relating to the Business all of which are listed in **Schedule 2.1.8 (d)** along with their respective expiration dates, that are required for the operation of the Business. All of such Governmental Permits are currently valid and in full force, and Seller has filed such timely and complete renewal applications as may be required with respect to such Governmental Permits. To Seller's Knowledge, no revocation, cancellation or withdrawal thereof has been threatened.

#### 2.1.9 Employee Relations and Benefits.

(a) **Schedule 2.1.9 (a)** sets forth a true and complete list of the names and base salaries of all employees of Seller involved in the operation of the Business (the "Employees"). Except as set forth on **Schedule 2.1.9 (a)**, Seller: (i) has withheld and reported all amounts required by law or by agreement to be withheld and reported with respect to wages, salaries, and other payments to employees, (ii) is not liable for any arrears of wages or any taxes or any penalty for failure to comply with any of the foregoing, and (iii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any governmental body, with respect to unemployment compensation benefits, social security, or other benefits or obligations for employees. No individual who is an independent contractor of Seller should have been treated as an employee of it for any tax (including but not limited to income, Social Security, unemployment or disability taxes) or other purposes. All Company employees are legally authorized to work for Seller in the United States and **Schedule 2.1.9 (a)** sets forth the names and details of all employees of Seller who are working in the United States under a visa (including type of visa and expiration date). Seller has paid in full all employee compensation that has accrued as of Closing (including without limitation all incentive compensation, bonuses and commissions) other than employee compensation included in the Financial Statements. All accrued but unused vacation and sick days of employees have been included as a liability on the Financial Statements and have been set forth in **Schedule 2.1.9(a)**. No employee of Seller has left the employment of Seller during the last sixty days and there is no person who is presently receiving COBRA benefits in connection with employment by Seller.

(b) **Schedule 2.1.9 (b)** lists each "employee benefit plan" (as such term is defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA") § 3(3)) and any other material employee benefit plan, program or arrangement of any kind (collectively, "Employee Benefit Plan") that Seller maintains or to which Seller contributes or has any obligation to contribute.

(i) Each such Employee Benefit Plan (and each related trust, insurance contract, or fund) has been maintained, funded and administered in accordance with the terms of such Employee Benefit Plan and complies in form and in operation in all material respects with the applicable requirements of ERISA, the Internal Revenue Code of 1986, as amended, and the regulations thereunder (the "Code"), and other applicable laws.

(ii) All required reports and descriptions (including Form 5500 annual reports, summary annual reports, and summary plan descriptions) have been timely filed and/or distributed in accordance with the applicable requirements of ERISA and the Code with respect to each such Employee Benefit Plan. The requirements of Part 6 of Subtitle B of Title I of ERISA and Code § 4980B and of any similar state law (collectively, "COBRA") have been met in all material respects with respect to each such Employee Benefit Plan and each Employee Benefit Plan maintained by an ERISA Affiliate that is an Employee Welfare Benefit Plan (as defined in ERISA) subject to COBRA.

(iii) All contributions (including all employer contributions and employee salary reduction contributions) that are due have been made within the time periods prescribed by ERISA and the Code to each such Employee Benefit Plan that is an Employee Pension Benefit Plan (as defined in ERISA) and all contributions for any period ending on or before Closing that are not yet due have been made to each such Employee Pension Benefit Plan or accrued in accordance with the past custom and practice of Seller. All premiums or other payments for all periods ending on or before Closing have been paid with respect to each such Employee Benefit Plan that is an Employee Welfare Benefit Plan.

(iv) Each such Employee Benefit Plan that is intended to meet the requirements of a "qualified plan" under Code §401(a) has received a determination or opinion from the Internal Revenue Service that such Employee Benefit Plan is so qualified and neither Shareholder nor Seller's directors or officers are aware of any facts or circumstances that could adversely affect the qualified status of any such Employee Benefit Plan.

(v) There have been no "Prohibited Transactions" (as defined in ERISA § 406 and Code § 4975) with respect to any such Employee Benefit Plan or any Employee Benefit Plan maintained by Seller or any other entity that is treated as a single employer with the Company for the purposes of Code § 414 (collectively, an "ERISA Affiliate"). No fiduciary has any liability for material breach of fiduciary duty or any other material failure to act or comply in connection with the administration or investment of the assets of any such Employee Benefit Plan. No action, suit, proceeding, hearing, or investigation with respect to the administration or the investment of the assets of any such Employee Benefit Plan (other than routine claims for benefits) is pending or, to the Knowledge of Shareholder or any of the directors and officers of Seller, threatened.

(vi) Seller has had delivered to Buyer correct and complete copies of the plan documents and summary plan descriptions, the most recent determination letter received from the internal Revenue Service, the most recent annual report (Form 5500, with all applicable attachments), and all related trust agreements, insurance contracts, and other funding arrangements which implement each such Employee Benefit Plan.

(c) Neither Seller nor any ERISA Affiliate contributes to, has any obligation to contribute to, or has any material liability under or with respect to any Employee Pension Benefit Plan that is a defined benefit plan.

(d) Neither Seller nor any ERISA Affiliate contributes to, has any obligation to contribute to, or has any material liability (including withdrawal liability as defined in ERISA §4201) under or with respect to any "multiemployer plan" (as defined in ERISA § 3(37)).

(e) Seller neither maintains, contributes to or has an obligation to contribute to, nor has any material liability or potential liability with respect to, any Employee Welfare Benefit Plan providing health or life insurance or other welfare-type benefits for current or future retired or terminated employees (or any spouse or other dependent thereof) of Seller other than in accordance with COBRA.

#### 2.1.10 Intellectual Property.

(a) Seller is the legal and beneficial owner of all right, title, and interest in and to the intellectual property included in the Purchased Assets (the "Intellectual Property"), free and clear of any and all liens, security interests, charges, encumbrances, entities, and other adverse claims.

(b) Seller has no patents or registered copyrights or trademarks, and no pending applications for the same. To the Knowledge of Seller, there is no potentially interfering patent, patent application, trademark or trademark application of any third party. Seller has received no written notice of any of the actions described in the preceding sentence, or of any similar denial or challenge claimed, against the Intellectual Property.

(c) To the Knowledge of Seller, no Intellectual Property is being infringed. There has been no challenge to the validity or enforceability of any patent or trademark, nor, to the Knowledge of Seller, no threat of any such challenge. To the Knowledge of Seller, none of the products manufactured and sold, nor any process or know-how used, by Seller infringes or is alleged to infringe any patent or other proprietary right of any other person.

2.1.11 Accounts Receivable; Contracts.

(a) The accounts receivable of Seller are bona fide accounts receivable created in the ordinary course of business. To the Knowledge of Seller, there are no facts or circumstances (other than general economic conditions) that are likely to result in any increase in the uncollectability of such accounts receivable. All notes and accounts receivable of Seller are reflected properly on its books and records, are valid receivables subject to no setoffs or counterclaims and are current and collectible.

(b) Seller is not in Default under any contract, which default could reasonably be expected to result in a liability on the part of Seller in excess of \$1,000 in any individual case, and the aggregate liabilities that could reasonably be expected to result from all such Defaults do not exceed \$5,000. Neither Seller nor Shareholder has received any communication from, and has not given any communication to, any other party indicating that Seller or such other party, as the case may be, is in Default under a contract to which Seller is a party. To Seller's Knowledge, (i) none of the other parties to any contract to which Seller is a party is in Default thereunder, and (ii) each such contract is enforceable against any other parties thereto in accordance with terms thereof. The Purchased Asset List shall contain a complete list of all contracts to be assumed, and Seller shall provide Buyer with true, correct and complete copies of all of such contracts, as promptly as possible but in any event by the Closing.

2.1.12 Customer Lists. Both on the date hereof and at Closing, Seller shall provide to Buyer true, correct, complete and current listings of and contact information for all of its customers, as further described in Article 1.2 hereto (the "Customer Lists"). All the customers listed on the Customer Lists (the "Customers") shall be active customers of Seller or have placed orders with Seller within the last year. Such lists shall specify all customers and amounts presently due and all past due customers and amounts. None of the Customers are past due in paying Seller for products provided and/or services rendered except as expressly set forth in the Customer Lists or on the Financial Statements. To the best of Seller's Knowledge, Seller has received no notice from any Customer indicating dissatisfaction with any Seller's products, services or amounts charged or threatening to discontinue using Seller for these or other reasons.

2.1.13 Brokers or Finders. Neither Seller, Shareholder nor Seller's officers and agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement that will become the obligation of Buyer.

2.2 Buyer Representations and Warranties. Buyer Represents and Warrants to Seller as of the date hereof and as of Closing, and agrees, as follows:

2.2.1 Organization and Good Standing. Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of New Jersey.

2.2.2 Authority; No Conflict. Buyer has obtained (or shall, before Closing, obtain) all necessary approvals for the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, and no further approvals of this Agreement are necessary to effectuate its terms. This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against it in accordance with its terms. This Agreement does not conflict with Buyer's organizational documents or with any agreement to which Buyer is a party, or give rise to the right of any party to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or to cancel, terminate, or modify, any contract; or result in the imposition or creation of any encumbrance upon any of the assets owned or used by Buyer. Buyer has the absolute and unrestricted right, power, authority and capacity to execute and deliver this Agreement and to perform its obligations hereunder. Neither the execution and delivery of this Agreement by Buyer or its assigns, nor the consummation or performance of any of the transactions contemplated hereby by Buyer or its assigns, will violate any organizational document of Buyer or any agreement to which it is a party. Buyer will not be required to give any notice to or obtain any consent from any person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the transactions contemplated hereby, except for such notices and consents as have already been obtained, such notices and/or consents necessary to transfer any intellectual property or intellectual property applications, and any notices or consents in connection with the line of credit mentioned in Article 3.3 hereof.

2.2.3 Certain Proceedings. There is no pending proceeding that has been commenced against Buyer that challenges, or may have the effect of preventing, delaying, making illegal, or otherwise interfering with, any of the Transactions contemplated hereby. To the Knowledge of Buyer, no such proceeding has been threatened.

2.2.4 Brokers or Finders. Buyer and its officers and agents have incurred no obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement that will become the obligation of Seller.

### Article III. EMPLOYMENT/LINE OF CREDIT

3.1 Shareholder to be Employed by Buyer. Simultaneously with Closing, Buyer shall employ Shareholder upon the terms and conditions set forth in an Employment Agreement substantially in the form of **Schedule 3.1 hereto**. Seller acknowledges that such employment will occur, represents that the employment of Shareholder by Buyer does not conflict with any obligation of the employee to Seller by contract, operation of law or otherwise, and Seller consents to such employment.

3.2 Seller's Employees. On the Closing Date, Buyer shall offer employment to all Employees of the Seller on terms substantially similar to the terms of employment under which such Employee is currently employed by the Seller; provided, that Buyer may terminate at any time after the Closing Date, the employment of any employee who accepts such offer. Buyer shall cover the Employees under Buyer's existing medical, dental, life and disability policies as of the date of Closing, and shall enroll the Employees under Buyer's 401K plan on the first enrollment eligibility date after Closing. The employees who accept and commence employment with Buyer are hereinafter collectively referred to as the "Transferred Employees". Seller will not take any action which would impede, hinder, interfere or otherwise compete with Buyer's effort to hire any Transferred Employee and shall permit access to Seller's employees before Closing in order to enroll them in the benefit plans described above. Buyer intends that any employees hired by it as set forth above would be managed in accordance with Buyer's standard practices applicable to Buyer's existing employees.

3.3 Line of Credit. Buyer agrees that it shall use all commercially reasonable efforts to have Shareholder removed as a personal guarantor of Seller's bank line of credit at Closing, and that if Shareholder is not so removed, Buyer shall pay in full the balance due with respect to such line of credit at Closing.

#### Article IV. PURCHASE PRICE AND PAYMENT

4.1 Purchase Price. The purchase price for the Purchased Assets shall consist of the following:

- (a) Subject to Article 4.1 (b) below, Buyer shall pay to Seller at closing an amount equal to (i) \$500,000, representing payment for property and equipment, plus (ii) the net book value on Seller's balance sheet as of the date of Closing of the accounts receivable and the remaining assets being acquired by Buyer, less (iii) the net book value on Seller's balance sheet as of the date of closing of Seller's liabilities, with such listed liabilities being assumed by Buyer. The purchase price shall be allocated for tax purposes as required by the Code. Seller and Buyer agree to complete and sign Internal Revenue Service Form 8594 and to file Form 8594 with their respective tax returns for the taxable year in which Closing occurs.
- (b) That amount of the purchase price equal to 20% of the net book value of the accounts receivable being acquired by Buyer shall be paid into an escrow account. As the final 20% of the accounts receivable acquired at closing are actually collected by Buyer, Seller shall be paid from the escrow account an amount equal to such collections within 10 days of the end of the month when collected. After six months from the date of Closing, any outstanding receivables subject to the escrow arrangement shall be returned to Seller and the remaining escrow funds returned to Buyer. Buyer shall permit Seller and Seller's legal and accounting advisors full, complete and prompt access, upon reasonable prior notice and at such times as are reasonably acceptable to Buyer and Seller, to all books, records, and other documents as may from time to time be reasonably requested by Seller to verify the collection of the accounts receivable as contemplated by this Article 4.1 (b).

- (c) For a period of four years from Closing, Seller shall receive as additional consideration for the sale of the Purchased Assets, on a quarterly basis, within 30 days after the end of each fiscal quarter of Buyer, an amount equal to 80% of the EBITDA (as defined below) in year one, 70% in year two, 60% in year three and 50% in year four of the Unit. Seller shall receive on a quarterly basis from Buyer a written report of the calculation of the EBITDA. EBITDA will be calculated in accordance with GAAP. EBITDA expenses will be calculated based on the following: (i) all direct expenses of the business unit to be operated following consummation of this transaction (the "Unit"), including personnel, personnel benefits, facilities, equipment, etc. will be included; (ii) synergistic savings will be credited to the Unit based on agreement between the executive in charge of the Unit and the President of Buyer; and (iii) proportional corporate expenses, including accounting, audits, SOX Compliance and corporate support and not to exceed \$100,000 per year, will be included. Buyer shall permit Seller and Seller's legal and accounting advisors full, complete and prompt access, upon reasonable prior notice and at such times as are reasonably acceptable to Buyer and Seller, to all books, records, and other documents as may from time to time be reasonably requested by Seller to verify the calculation of the EBITDA as contemplated by this Article 4.1 (c).

4.2 Seller and Buyer agree that Seller may supply inventory to Buyer at a mutually agreed upon price for inclusion in finished products to be sold.

## Article V. CLOSING

5.1 Closing Time and Place. Closing of the sale and purchase of assets (the "Closing") shall take place at the offices of Buyer's attorney at such time and date as the parties shall agree, but as soon as practical and in any event before March 31, 2009 unless such date is mutually extended by Buyer and Seller.

5.2 Seller's deliveries at Closing. Seller shall deliver at Closing (and it is a condition to Buyer's obligations to deliver the Option and close the transaction that all such deliveries be made):

5.2.1. Bills of Sale and such other documents as may be necessary to convey to and vest in Buyer title to the Purchased Assets free and clear of all liens, claims and encumbrances (other than those obligations expressly assumed by Buyer hereunder), including but not limited to instruments of assignments and transfer, in form and substance satisfactory to Buyer, of all registration certificates or applications for the same for all Intellectual Property, including patents, marks, web sites, business logos, utility models of any nature hereunder, the right to use the names "Micro Memory Bank," "Memorystore" and "18004Memory" and all the business logos and domain names of Seller, as well as all other information or data relating to the web site of Seller. Ownership of items having no tangible physical representation is deemed transferred to Buyer at Closing.

5.2.2. The lists of Purchased Assets and Excluded Assets.

5.2.3. The Financial Statements.

5.2.4. All Customer Lists.

5.2.5. The Certificate from the Commonwealth of Pennsylvania showing “no liens” for Pennsylvania taxes.

5.2.6. A Certificate of Amendment of the Certificate of Incorporation of Buyer, duly executed by the appropriate officer(s) of Buyer, changing its name to a name not including the words “Micro Memory Bank,” “Memorystore” or “18004Memory.” Seller agrees that Buyer may file or cause to be filed such certificate immediately upon consummation of Closing.

5.2.7. An opinion letter from counsel to Seller in form and substance satisfactory to Buyer and its counsel.

5.2.8. A Secretary’s Certificate in form and substance satisfactory to Buyer setting forth a complete listing of all officers, directors and shareholders and certifying resolutions of the Board of Directors of Seller approving this Agreement.

5.2.9. A Certificate of the appropriate officer(s) of Buyer that all representations and warranties made in the Agreement are true at Closing.

5.2.10. Internal Revenue Service Form 8594 signed by Seller and Buyer.

5.2.11. Schedule 2.1.9(a) updated through the Closing Date for accrued vacation and sick pay.

5.2.12. An assignment and assumption of Seller’s real estate lease for the Premises known as 130 Corporate drive, Montgomeryville, PA 18936 and of Seller’s postage meter lease, each signed by Seller, Buyer and the relevant property owner, and any other documentation required for the assignment of contracts from Seller to Buyer.

5.2.13. The Employment Agreement for David Sheerr, in the form attached hereto as “Exhibit A,” signed by Buyer and David Sheerr.

5.3. Buyer’s deliveries at Closing. At Closing, Buyer shall deliver (and it is a condition to Sellers obligation to close the transaction that all such deliveries be made):

5.3.1 The portion of the Purchase Price required to be delivered at Closing pursuant to Article 4.1 (a) hereof.

5.3.2. Evidence of the removal of Shareholder from his guaranty of obligations under the line of Credit described in Article 3.3 hereto or evidence of the payment in full of such Line of Credit.

5.3.3. An assignment and assumption of Seller's real estate lease for the Premises known as 130 Corporate drive, Montgomeryville, PA 18936 and of Seller's postage meter lease, each signed by Seller, Buyer and the relevant property owner, and any other documentation required for the assignment of contracts from Seller to Buyer.

5.3.4 An assumption by Buyer of the Assumed Obligations, in form and substance satisfactory to Seller's counsel.

5.3.5. A Secretary's Certificate in form and substance satisfactory to Seller certifying resolutions of the Board of Directors of Buyer approving this Agreement.

5.3.6. A Certificate of the appropriate officer(s) of buyer that all representations and warranties made in the Agreement are true at Closing.

5.3.7. Internal Revenue Service Form 8594 signed by Seller and Buyer.

5.3.8. The Employment Agreement for David Sheerr, in the form attached hereto as "Exhibit A," signed by Buyer and David Sheerr.

5.4 Further Conditions to Closing. Notwithstanding any other provision of this Agreement to the contrary, Buyer's obligation to close is also conditioned on (i) the obtaining of all necessary regulatory approvals and consents; (ii) the completion of a full and thorough commercial, legal, environmental and financial due diligence exercise to the reasonable satisfaction of Buyer, and the satisfaction of Buyer with the result of such review in its sole discretion, the details and timing of which to be agreed by Buyer with its professional advisors (as the financial statements of Seller are not audited, Buyer reserves the right, at its sole expense, to have an audit performed by an independent certified public accounting firm whose objectives would include the testing and validation of the integrity of the financial data and its conformance to Generally Accepted Accounting Principles); and (iii) Buyer's determination that no actions shall have taken place prior to Closing which in its reasonable opinion would or may damage the business or materially affect the valuation of the business of Seller.

## Article VI. COSTS AND EXPENSES

6.1 Each of the parties shall bear their own costs and expenses including fees in respect of external advisors, including investment bankers, auditors and lawyers.

6.2 Any costs relating to the transfer of the Purchased Assets including but not limited to costs relating to transfer of intellectual property rights shall be paid by Buyer.

#### Article VII. SELLER'S NOTICE TO TAXING AUTHORITIES.

Seller shall provide ten-day notice letters to the Pennsylvania Department of Labor and Industry (pursuant to Section 308.3 of the Unemployment Compensation Law) and the Pennsylvania Department of Revenue (pursuant to Section 1403 of the Fiscal Code (relating to non-individual sellers), and Section 240 of the Tax Reform Code of 1971).

#### Article VIII. CONFIDENTIALITY AND NON-COMPETITION

8.1 Confidentiality. "Confidential Information" includes all information, whether oral, written or machine readable, tangible or intangible, relating to Buyer's business, products, services, processes, programs, customers, suppliers, marketing, methods, business plans and/or business prospects, and the terms of this Agreement. Seller agrees to preserve all Confidential Information in confidence, and shall not use or disclose such to any third party, other than to the parties' respective employees and advisors including attorneys who have a need to know such information to fulfill their duties. Confidential Information shall not include information (i) in possession of a party or its affiliates prior to the time of disclosure, (ii) that is or becomes generally known in the industry or to the public, (iii) that is made available to a party hereto by a third party who is not under a duty to keep such information confidential, (iv) independently developed by a party. This provision shall not prevent the disclosure of Confidential Information required to be disclosed by law, regulation or court order (so long as a good faith attempt is made to notify Buyer in advance of the disclosure in order to permit Buyer a reasonable opportunity to seek a protective order or other relief to prevent or limit the disclosure).

8.2. Non-Competition. "Prohibited Activity" means (i) the conduct of the operations constituting same type of operations as the Business or any aspect thereof anywhere in the world, including but not limited to engaging in selling or purchasing inventory or product except for the sale of Seller's inventory purchased before the date of this Agreement or (ii) soliciting employees of the Company in connection with any business, whether or not such business competes with the business of the Company, its successors or affiliates. Seller shall not engage in any Prohibited Activity during the period beginning on the date of Closing and ending on the second anniversary of the date of the last payment made by Buyer with respect to the Purchase Price under this Agreement. For a period of six (6) months after Closing, Seller will correspond with the Customers in any reasonable manner requested by Buyer to support the acquisition of the Purchased Assets by Buyer. Seller agrees that from and after Closing Seller will not otherwise directly or indirectly contact or attempt to contact any Customers in connection with the Purchased Assets other than through the officers of Buyer, except to collect any accounts receivables existing at the date of Closing, except as specifically requested by Buyer and except to solicit orders for and otherwise, sell and transfer its inventory purchased before the date of this Agreement. Seller also agrees that no such inventory may be sold under the name "Micro Memory Bank" or any other name transferred to Buyer pursuant to this Agreement.

8.3. Enforcement: Injunctive Relief. Seller acknowledges that a breach of this Article 8 would cause immediate and irreparable damage which would not adequately be remedied by monetary damages, and therefore Seller agrees that injunctive relief in addition to any other legal or equitable remedies available (including, without limitation, monetary damages) is appropriate in order to enforce this Article 8 Seller has reviewed the scope, duration and geographical limitations of the covenants made in Article 8.2 and agrees that they are reasonable and necessary to protect Buyer. However, the parties agree that if such Article 8.2 is found to be unenforceable due to restrictions unreasonable in scope, duration or geographical area, then the appropriate court may reform Article 8.2 so that the restrictions in it are reasonable and enforceable.

#### Article IX. INDEMNIFICATION

9.1 Seller and Shareholder shall jointly and severally shall indemnify, defend, and hold Buyer and its officers, directors, agents, partners, members, controlling entities and employees (collectively, "Buyer Indemnitees") harmless from and against any liability, claim, cost, loss, judgment, damage or expense (including reasonable attorneys' fees and expenses) that Buyer Indemnitees incur or suffer as a result of, or arising out of (a) Seller's or Shareholder's breach of any of Seller's or Shareholder's representations, warranties, covenants or agreements in this Agreement or (b) any Retained Obligations.

9.2 Buyer shall indemnify, defend, and hold Seller, Shareholder and Seller's officers, directors, agents, partners, members, controlling entities, and employees (collectively, "Seller Indemnitees") harmless from and against any liability, claim, cost, loss, judgment, damage or expense (including reasonable attorneys' fees and expenses) that Seller Indemnitees incur or suffer as a result of or arising out of (a) Buyer's breach of any of Buyer's representations, warranties, covenants or agreements in this Agreement or (b) any Assumed Obligations.

#### Article X. NOTICES

10.1 All communications between the parties hereto in respect of, or notices or other information sent under, this Agreement shall be in writing, hand delivered or sent by overnight courier, electronic transmission or telecopier, addressed to the relevant party at its address, electronic mail or facsimile number specified below or at such other address, electronic mail or facsimile number as such party may subsequently request in writing. Each party shall promptly notify the other of a change of address. All such communications and notices shall be effective upon receipt.

10.2 If Seller receives any notices, correspondence or other documents in respect of the Purchased Assets, Seller shall promptly forward them to Buyer.

Copies of all notices or other communication shall be sent to:

With respect to Seller:

Micro Memory Bank, Inc.  
c/o Mr. David Sheerr  
130 Corporate Drive  
Montgomeryville, PA 18936

with a copy to:

L. Gerald Rigby  
Archer & Greiner, P.C.  
One Liberty Place - 32nd Floor 1650 Market Street  
Philadelphia, PA 19103-7393  
215-279-9684  
Fax: 215-568-2843  
Email: grigby@archerlaw.com

With respect to Shareholder:

Mr. David Sheerr  
1051 McKean Road  
Ambler, PA  
19002

with a copy to:

L. Gerald Rigby  
Archer & Greiner, P.C.  
One Liberty Place - 32nd Floor 1650 Market Street  
Philadelphia, PA 19103-7393  
215-279-9684  
Fax: 215-568-2843  
Email: grigby@archerlaw.com

With respect to Buyer:

President  
Dataram Corporation  
Route 571  
P.O. Box 7528  
Princeton, NJ 08543-7528  
Telephone: (609) 799-0071  
Telefax: (609) 936-1689

with a copy to:

Thomas J. Bitar, Esq.  
DILLON, BITAR & LUTHER, L.L.C.  
53 Maple Avenue  
P.O. Box 398  
Morristown, NJ 07963-0398  
Tel.: 973-539-3100  
Fax: 973-292-2960  
Email: tbitar@dbl-law.com

Article XI. MISCELLANEOUS

11.1 Tax Cooperation. From and after Closing, Seller and Buyer shall each (i) provide the other party with such assistance as may be reasonably requested in connection with the preparation of any tax return or any audit or other examination by any Governmental Entity or any other Legal Proceeding involving or relating to liability for taxes, (ii) retain and provide to the other party all records and other information that may be relevant to any such tax return, audit or examination, proceeding or determination and (iii) provide the other party with any final determination of any such audit or examination, proceeding or determination that affects any amount required to be shown on any tax return of the other party for any period, in each case only to the extent such matters pertain to the Purchased Assets.

11.2 Transfer Taxes. Except with respect to sale and use taxes, as provided below, all other transfer, stamp, duty and similar taxes assessed or payable by state and local taxing authorities in connection with the transfer of the Purchased Assets or other transactions contemplated by this Agreement ("Transfer Taxes"), regardless of whether such Transfer Taxes become due or payable on or after Closing, shall be paid by the party legally responsible therefor. If sales and use taxes are due in respect of the transactions contemplated hereunder, then Buyer shall bear the total sales and use tax amount.

11.3 Further Assurances. Each party hereto agrees to (i) execute and deliver, or to cause to be executed and delivered, all such other and further agreements, documents and instruments and (ii) take or cause to be taken all such actions as the other party may reasonably request to effectuate the intent and purposes, and to carry out the terms, of this Agreement.

11.4 Survival; Successors and Assigns. All representations, warranties, covenants, indemnities and other provisions made by the parties hereto shall be considered to have been relied upon by the parties hereto, shall be true and correct as of Closing, and shall survive the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby for a period of four (4) years, except that there shall be no time limitation with respect to tax or environmental matters. This Agreement, including the representations, warranties, covenants and indemnities contained in this Agreement, shall inure to the benefit of, be binding upon and be enforceable by and against the parties hereto and their respective successors and permitted assigns.

11.5 Exercise of Rights and Remedies. No amendment of any provision of this Agreement shall be effective unless it is in writing and signed by the parties hereto and no waiver of any provision of this Agreement, nor consent to any departure by any party from it, shall be effective unless it is in writing and signed by the affected party, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of a party hereto to exercise, and no delay in exercising, any right or remedy under this Agreement shall operate as a waiver hereof by such party, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies of each party provided herein (a) are cumulative and are in addition to, and are not exclusive of, any rights or remedies provided by law (except as otherwise expressly set forth in this Agreement) and (b) are not conditional or contingent on any attempt by such party to exercise any of its rights under any other related document against the other party or any other entity.

11.6 Entire Agreement; Conflict. This Agreement and the exhibits and schedules hereto constitute the entire agreement of the parties with respect to the transactions contemplated hereby and supersedes all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, representations and warranties in respect thereof, all of which have become merged and finally integrated into this Agreement.

11.7. Counterparts; Telecopies. This Agreement may be executed in multiple counterparts and all of such counterparts taken together shall be deemed to constitute one and the same instrument. Transmission by telecopier, facsimile or other form of electronic transmission of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart. Each fully executed counterpart of this Agreement shall be deemed to be a duplicate original.

11.8. Severability. The illegality, invalidity or unenforceability of any provision of this Agreement under the law of any jurisdiction shall not affect its legality, validity or enforceability under the law of any other jurisdiction nor the legality, validity or enforceability of any other provision.

11.9. Governing Law. THIS AGREEMENT, THE RIGHTS AND OBLIGATIONS OF THE PARTIES UNDER THIS AGREEMENT AND ANY CLAIM OR CONTROVERSY DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL IN ALL RESPECTS BE GOVERNED BY AND INTERPRETED, CONSTRUED AND DETERMINED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW JERSEY (WITHOUT REGARD TO ANY CONFLICTS OF LAW PROVISION THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION).

11.10. Jurisdiction. Each of the parties hereto irrevocably and unconditionally submit to and accept the exclusive jurisdiction of the United States District Court for the District of New Jersey located in the County of Mercer or the courts of the State of New Jersey located in the County of Mercer for any action, suit or proceeding arising out of or based upon this Agreement or any matter relating to it and waive any objection that they may have to the laying of venue in any such court or that such court is an inconvenient forum or does not have personal jurisdiction over them.

11.11 Interpretation. Article and other headings and captions are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Agreement. This Agreement shall be deemed to have been jointly drafted and negotiated by the parties and no provision of it shall be interpreted or construed for or against either party because such party actually or purportedly prepared or requested such provision, any other provision or the Agreement as a whole.

[signature page follows]

IN WITNESS WHEREOF, Seller and Buyer have executed this Asset Purchase Agreement by their duly authorized officers as of the date first set forth above.

MICRO MEMORY BANK, INC.

By: /s/ David S. Sheerr  
Name: David S Sheerr  
Title: President

DATARAM CORPORATION

By: /s/ John H. Freeman  
Name: John H. Freeman  
Title: President & CEO

/s/ David Sheerr

David Sheerr, individually and as sole shareholder of Seller

## Rule 13a-14(a) Certification

## CERTIFICATION OF CHIEF EXECUTIVE OFFICER PURSUANT TO SECTION 302

I, John H. Freeman, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Dataram Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's Board of Directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 16, 2013 /s/ John H. Freeman

John H. Freeman, President and  
Chief Executive Officer  
(Principal Executive Officer)

## Rule 13a-14(a) Certification

## CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO SECTION 302

I, Marc P. Palker, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Dataram Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's Board of Directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: September 16, 2013 /s/ Marc P. Palker  
Marc P. Palker  
Chief Financial Officer  
(Principal Financial & Accounting  
Officer)



CERTIFICATION OF CHIEF FINANCIAL OFFICER PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002  
(18 U.S.C. SECTION 1350)

In connection with the Quarterly Report of Dataram Corporation, a New Jersey corporation (the "Company"), on Form 10-Q for the quarter ended July 31, 2013, as filed with the Securities and Exchange Commission (the "Report"), Marc P. Palker, Chief Financial Officer of the Company, does hereby certify, pursuant to § 906 of the Sarbanes-Oxley Act of 2002 (18 U.S.C. § 1350), that to his knowledge:

- (1) The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
- (2) The information contained in the Report fairly presents, in all material respects, the financial condition and result of operations of the Company.

September 16, 2013 /s/ Marc P. Palker  
Marc P. Palker  
Chief Financial Officer

[A signed original of this written statement required by Section 906 has been provided to Dataram Corporation and will be retained by Dataram Corporation and furnished to the Securities and Exchange Commission or its staff upon request.]