

generally available in the public domain prior to the time of disclosure by the Discloser; (ii) becomes publicly known or made generally available after disclosure by the Discloser to the Recipient through no action or inaction of the Recipient; (iii) was already in the possession of the Recipient without confidentiality obligations at the time of disclosure by the Discloser as shown by the Recipient's files and records prior to the time of disclosure by the Discloser; (iv) is obtained by the Recipient without confidentiality obligations from a third party without a breach of such third party's obligations of confidentiality; or (v) is independently developed by the Recipient without use of or reference to the Discloser's Confidential Information, as shown by documents and other competent evidence in the Recipient's possession.

(c) *Co pelled Disclosure.* If the Recipient becomes legally compelled to disclose Confidential Information, the Recipient will provide the Discloser prompt written notice, if legally permissible, so that the Discloser may seek a protective order, seek another appropriate remedy, or waive the Recipient's compliance with this Agreement. If the Discloser waives the Recipient's compliance with this Agreement or fails to obtain a protective order or other appropriate remedy, the Recipient will furnish only that portion of the Confidential Information that is legally required to be disclosed and will use its best efforts to obtain confidential treatment for such Confidential Information.

3. Non-use and Non-disclosure. The Recipient shall not use any Confidential Information of the Discloser for any purpose except only in connection with the Opportunity. The Recipient shall not disclose, or permit to be disclosed, any of the Discloser's Confidential Information, directly or indirectly, to any third party without the Discloser's express written permission. The Recipient may disclose or grant access to the Discloser's Confidential Information to only those employees of the Recipient who require the Confidential Information in order to evaluate or engage in discussions concerning the Opportunity, and Recipient's agents, representatives, lawyers, consultants and other advisers that have a need to know such Confidential Information. The Recipient shall neither disclose nor grant access to Confidential Information to any employee of the Recipient unless such employee is bound by confidentiality obligations at least as restrictive as the provisions hereof, prior to any disclosure of Confidential Information to such employee. The Recipient shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects that embody the Discloser's Confidential Information and that are provided to the Recipient under this Agreement.

4. Maintenance of Confidentiality. The Recipient shall take reasonable measures to protect the secrecy of and avoid disclosure and unauthorized use of the Confidential Information of the Discloser. Without limiting the foregoing, the Recipient shall take at least those measures that it takes to protect its own confidential information of a similar nature, but in no event less than reasonable measures. The Recipient shall reproduce the Discloser's proprietary rights notices on any copies of Confidential Information, in the same manner in which such notices were set forth in or on the original. The Recipient shall promptly notify the Discloser of any use or disclosure of the Discloser's Confidential Information in violation of this Agreement of which the Recipient becomes aware.

5. No Obligation. Nothing in this Agreement shall obligate either Party to enter into any transaction between them, and each Party reserves the right, in its sole discretion, to terminate the discussions contemplated by this Agreement concerning the Opportunity.

Parties with respect to the subject matter thereof and supersedes all prior written and oral agreements, and the Recipient shall not have any obligation, express or implied by law, with respect to the trade secret or proprietary information of the Discloser except as set forth in this Agreement. If any provision of this Agreement is found to be illegal or unenforceable, the other provisions shall remain effective and enforceable to the greatest extent permitted by law. No provision of this Agreement may be waived except by a writing executed by the Party against whom the waiver is to be effective. A Party's failure to enforce any provision of this Agreement shall neither be construed as a waiver of the provision nor prevent such Party from enforcing any other provision of this Agreement. No provision of this Agreement may be amended or otherwise modified except by a writing signed by the Parties to this Agreement. The Parties may execute this Agreement in counterparts, each of which is deemed an original, but all of which together constitute one and the same agreement. This Agreement may be delivered by facsimile transmission, and facsimile copies of executed signature pages shall be binding as originals.

IN WITNESS WHEREOF, the Parties by their duly authorized representatives have executed this Agreement as of the Effective Date.

Semiconductor Manufacturing
International Corporation

Company Name

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____