



Semiconductor Manufacturing International Corp.

**SMIC Confidential**

## **MUTUAL NON-DISCLOSURE AGREEMENT**

This Mutual Non-Disclosure Agreement (this “**Agreement**”), effective \_\_\_\_\_, 20\_\_\_\_ (“**Effective Date**”), is entered into by and between Semiconductor Manufacturing International Corporation, a Cayman Islands company having its principal place of business at 18, Zhang Jiang Road, Pu Dong New Area, Shanghai 201203, People's Republic of China on behalf of itself and all of its Affiliates (“SMIC”) and \_\_\_\_\_, a \_\_\_\_\_ corporation having offices at \_\_\_\_\_ (“**Company**”). (Each of SMIC and Company is a “**Party**” and together the “**Parties**”)

Affiliate as used herein means, with respect to a party, any existing or future

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 protective 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.

6. No Warranty. ALL CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". NEITHER PARTY MAKES ANY WARRANTIES, EXPRESS, IMPLIED OR OTHERWISE, REGARDING THE ACCURACY, COMPLETENESS OR PERFORMANCE OF THE CONFIDENTIAL INFORMATION.

7. Return of Materials. All documents and other tangible objects containing or representing Confidential Information that have been disclosed by the Discloser to the Recipient, and all copies or extracts thereof that are in the possession of the Recipient, shall be and remain the property of the Discloser and shall be promptly returned to the Discloser upon the Discloser's written request or destroyed (with proof of such destruction) promptly after termination of the Agreement.

8. No License. Nothing in this Agreement is intended to grant any rights to the Recipient under any patent, mask work, or copyright of the Discloser, nor shall this Agreement grant either the Recipient any rights in or to the Confidential Information of the Discloser except as expressly set forth in this Agreement.

9. Export Laws. The Recipient represents that it shall adhere to all applicable laws, regulations and rules relating to the import, export and re-export of the Confidential Information or any other product, technology, or software provided hereunder. The Recipient shall not export or re-export any Confidential Information or any product, technology, or software provided hereunder, or the direct product thereof, in violation of any applicable laws, regulations and rules unless properly authorized by the appropriate authorities.

10. Term. This Agreement shall have full legal effect from the Effective Date until terminated by either party by giving 30 days written notice to the other party. Notwithstanding such termination, the obligations of each party concerning confidentiality shall terminate five [5] years following receipt of the Confidential Information.

11. Remedies. The Recipient agrees that any violation or threatened violation of this Agreement may cause irreparable injury to the Discloser, entitling the Discloser to seek injunctive relief in addition to all legal remedies.

12. Miscellaneous. This Agreement shall bind and inure to the benefit of the Parties and their respective successors and permitted assigns. This Agreement will be interpreted and construed in accordance with the substantive law in force in Hong Kong Special Administrative Region ("Hong Kong"), without regard to conflict of law

principles. Any dispute, difference or claim arising out of or in connection with this contract, including the validity, invalidity, breach or termination thereof, shall be settled by arbitration in Hong Kong under the Hong Kong International Centre Administered Arbitration Rules (the “Rules”) in force when the Notice of the Arbitration is submitted