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 corporation or legal entity that now or hereafter Controls, is Controlled by or is under common Control with such a party; where "Control" means the direct or indirect ownership of greater than fifty percent (50%) of the shares or similar interests entitled to vote for the election of directors or other persons performing similar functions. An entity may be considered an Affiliate only when such control exists.

In consideration of the covenants and conditions contained herein, the Parties hereby agree to the following**:**

1.   Purpose. The Parties wish to explore a business opportunity of mutual interest (the "**Opportunity**"), and in connection with the Opportunity, each Party (in such capacity, the "**Discloser**") will disclose to the other Party (in such capacity, the "**Recipient**") certain confidential technical and business information that the Discloser desires the Recipient to treat as confidential.

2.   Definition.

        (a)   "**Confidential Information**" means any information disclosed by the Discloser to the Recipient pursuant to this Agreement which (i) if in tangible form (including, for example, documents, prototypes or samples), is clearly marked "Confidential", "Proprietary" or in some other manner to indicate its confidential nature, or (ii) if disclosed orally or by visual inspection is designated as "Confidential" immediately prior to such disclosure and reduced to a writing marked "Confidential" within thirty (30) days of such initial disclosure. Confidential Information may include information of a third party that is in the possession of the Discloser and is disclosed to the Recipient under this Agreement.

        (b)   *Exceptions*. The obligations under this Agreement shall not apply to any information that the Recipient can demonstrate: (i) was publicly known or made

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)   *Copelled 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.   <u>Non-use and Non-disclosure</u>. 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.   <u>Maintenance of Confidentiality</u>. 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.   <u>No Obligation</u>. 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.   <u>No Warranty</u>. 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.   <u>Return of Materials</u>. 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.   <u>No License</u>. 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.   <u>Export Laws.</u> 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.   <u>Term</u>. 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.   <u>Remedies</u>. 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.   <u>Miscellaneous</u>. 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 laws of the People's Republic of China, without regard to conflict of law principles. All disputes arising out of this Agreement

Economic and Trade Arbitration Commission for arbitration and each Party hereby consents to the personal jurisdiction thereof. This Agreement contains the entire agreement between the 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.