CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

This CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this “Agreement”) is made as of Recipient signature date below (hereinafter “Effective Date”) by and between The Methodist Hospital Research Institute dba Houston Methodist Research Institute (“Methodist”) and the person or entity listed on the signature page of this Agreement (“Recipient”).

WITNESSETH

WHEREAS, Methodist will furnish certain confidential and proprietary information regarding Methodist, generally, and regarding its 200mm Silicon Wafer specifications, products and processes (collectively, “Methodist Confidential Information”), in order for Recipient to review, analyze and evaluate such Confidential Information for wafer production services RFP to Methodist (the “Purpose”); and

WHEREAS, Methodist Confidential Information furnished on or after the date hereof in writing, or if verbally or visually, then noted as confidential at the time of disclosure and described in a writing submitted to Recipient within thirty (30) days following that disclosure, along with any non-public information received or observed by Recipient during access to Methodist facilities or assets, and all analyses, compilations, data, studies, notes, interpretations, memoranda, extracts or other documents incorporating or interpreting any such information, will be referred to collectively as “Confidential Information”; and

WHEREAS, Methodist desires to protect and preserve its rights in the Confidential Information it discloses to Recipient, and consequently requires Recipient to agree, as set forth below, to treat confidentially all Confidential Information about Methodist;

NOW, THEREFORE, for and in consideration of the disclosure of the Confidential Information to Recipient and other good and valuable consideration, the receipt and adequacy of which are acknowledged and confessed, the parties hereto agree as follows:

1. Recipient shall maintain the confidentiality of all Confidential Information. Recipient shall not use any of the Confidential Information for any reason or purpose, directly or indirectly, other than the Purpose. Recipient recognizes and acknowledges that the Confidential Information is the property of Methodist, and that modifications to the Confidential Information made by Recipient are the property of Methodist. To the extent that Methodist does not have ownership of those modifications by law, Recipient shall assign those modifications to Methodist. Without limiting the generality of the foregoing, Recipient shall not use any of the Confidential Information in the furtherance of its own business or in a manner that is detrimental or adverse to the interests of Methodist.

2. Recipient shall ensure that the Confidential Information shall not, without the prior written consent of Methodist be disclosed in any manner whatsoever, in whole or in part, to
any third party. Recipient may disclose the Confidential Information to employees and agents whom Recipient reasonably determines need access to the Confidential Information, for the Purpose, on behalf of Recipient, provided that those employees and agents are bound by a duty to maintain the confidentiality of that Confidential Information. Recipient shall inform all of its employees and agents who receive the Confidential Information of the confidential and proprietary nature of the Confidential Information and shall direct all such persons to treat the Confidential Information confidentially and not to disclose the Confidential Information to third parties or use the Confidential Information for any purpose other than the Purpose. Recipient shall be responsible in any event for any breach of this Agreement by any of their employees or agents and shall make all necessary and appropriate efforts to safeguard the Confidential Information from disclosure to third parties. Notwithstanding the foregoing, and without limiting the obligation of the parties to comply with all applicable laws, Recipient specifically acknowledges that it is familiar with and shall comply with all laws regarding the export of all or any portion of the Confidential Information.

3. This Agreement shall not apply to such portions of the Confidential Information which Recipient can prove (a) are or become generally available to the public through no fault or action by Recipient or its agents, (b) become available to Recipient on a non-confidential basis from a source, other than Methodist or its agents, which is not prohibited from disclosing such portions of the Confidential Information to Recipient by a contractual, legal or fiduciary obligation to Methodist; or (c) Recipient can demonstrate were or are developed by Recipient independently of its knowledge of or access to the other Methodist’s Confidential Information.

4. If Recipient becomes legally compelled to disclose any of the Confidential Information, Recipient shall use its reasonable efforts under the circumstances (a) to provide Methodist with prompt notice so that Methodist may seek a protective order or other appropriate remedy, and (b) to furnish only that portion of the Confidential Information which is legally required to be furnished.

5. Money damages alone would not constitute a sufficient remedy for any breach of this Agreement by Recipient and Methodist shall be entitled to seek specific performance and injunctive relief, without the necessity of posting a bond, cash or otherwise, as remedies for any such breach. Such remedies shall not be deemed to be the exclusive remedies available to Methodist for a breach of this Agreement by Recipient, but shall be in addition to all other remedies available to Methodist at law or in equity.

6. Recipient shall return the Methodist Confidential Information to Methodist within thirty (30) days following the earlier of (a) receipt of written request from Methodist, (b) expiration of this Agreement, or (c) termination of this Agreement. As to that portion of the Confidential Information which constitutes projections, appraisals, memoranda, notes, analyses, compilations, studies and other documents, including copies or extracts thereof, prepared by Recipient or its agents, Recipient shall either deliver same to Methodist in accordance with the previous sentences or shall destroy them and deliver a letter to Methodist acknowledging the destruction of such portion of the Confidential Information. Notwithstanding the foregoing,
Recipient may retain one copy of Methodist’s Confidential Information solely for archival and compliance purposes, provided that information is maintained in confidence until it is destroyed. The obligations set forth in this paragraph shall survive the termination or expiration of this Agreement.

7. This Agreement shall terminate on the earlier of termination of discussions regarding the Purpose or the second (2nd) anniversary of the Effective Date. The obligations of Recipient shall continue for a period of five (5) years from the Effective Date of this Agreement.

8. DISCLAIMER OF WARRANTY: ALL CONFIDENTIAL INFORMATION IS PROVIDED ON AN “AS IS” BASIS. METHODIST MAKES NO WARRANTIES OF ANY KIND; SPECIFIC, IMPLIED OR ORAL. WITHOUT LIMITING THE FOREGOING, METHODIST SPECIFICALLY DISCLAIMS ANY WARRANTY WITH REGARD TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF ANY CONFIDENTIAL INFORMATION.

9. Recipient shall notify Methodist immediately of any unauthorized use of Confidential Information of which Recipient becomes aware and shall fully cooperate with Methodist (without expense to Recipient if such unauthorized use did not result from a breach of this Agreement by Recipient) in any defense of Methodist’s proprietary rights in the Confidential Information.

10. This Agreement may be assigned, in whole or in part, only with the consent of the other party. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, agents, successors and assigns. Assignment shall not relieve the assigning party from all of the obligations that accrued prior to the date of assignment.

11. No failure or delay by Methodist in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof by Methodist preclude any other or further exercise thereof or the exercise of any right, power and privilege hereunder.

12. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, United States of America, without application of principles of conflicts of law. The parties consent to the exclusive jurisdiction of the courts of Harris County, State of Texas in connection with any action arising from or in connection with this Agreement.

13. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. Images of signatures sent by facsimile transmission or other electronic means shall have the same effect as original signatures.

[Remainder of Page Intentionally Blank – Signature Page Follows]
IN WITNESS WHEREOF, the parties hereto have caused this Confidentiality and Non-Disclosure Agreement to be executed by their duly authorized officers as of the date first above written.

THE METHODIST HOSPITAL RESEARCH INSTITUTE

By: ____________________________
Name: __________________________
Title: __________________________
Date: __________________________

RECIPIENT:

______________________________
name of entity

By: ____________________________
Name: __________________________
Title: __________________________
Date: __________________________