

Mutual Non-Disclosure Agreement

This Non-Disclosure Agreement (“Agreement”) is made and entered into as of this ___ day of _____ 20__ (“Effective Date”) by and between **Sanmina Corporation dba Viking Technology**, a Delaware corporation having a principal place of business at 20091 Ellipse, Foothill Ranch, California 92610 and its subsidiaries and affiliates (collectively “Sanmina”) and:

Company/Corporation: _____

State of Incorporation: _____

Principal Place of Business: _____

and its subsidiaries and affiliates (collectively “Customer”).

1. **Purpose of Disclosure.**

This Agreement allows the parties to exchange Confidential Information (defined below) and evaluate whether to enter into a relationship for the manufacture, supply, and sale of Sanmina Products, Sanmina Intellectual Property Products, including, but not limited to, ArxCis™, SATADIMM™, SATA Cube³™, and Nighthawk Products, and future Sanmina Intellectual Products, to Customer and related projects (the “Purpose”). In connection with the Purpose, either party (the “Disclosing Party”) may disclose Confidential Information to the other party (the “Receiving Party”).

2. **Confidential Information Defined.**

Information that is to be treated as Confidential under this Agreement shall:

A. be (i) disclosed in tangible form (including electronic form) and marked by the Disclosing Party as “Confidential,” “Proprietary” or other appropriate legend indicating the confidential nature of the information, or (ii) disclosed orally or visually and be identified by the Disclosing Party as confidential and summarized in tangible form, marked in accordance with this Section, and the summary delivered to the Receiving Party within thirty days after the date of such disclosure;

B. include samples, or prototypes, or information, in any form or medium, regarding pricing, customers and prospective customers, vendors and vendor lists, costed bills of materials, processes, know-how, designs, formulae, computer programs, databases, methods of operation, sales techniques, business methods and plans, marketing plans and strategies, finances, management, plant and equipment, or other business information relating to the Disclosing Party, whether constituting a trade secret, proprietary information or otherwise, which has value to the Disclosing Party and is treated by the Disclosing Party as being confidential.

3. **Information That Is Not Confidential.**

Information in the following categories shall not be considered Confidential Information under this Agreement: (a) information which is in the public domain at the time of the receipt under this Agreement; (b) information which comes into the public domain after receipt under this Agreement without a breach of this Agreement by the Receiving Party; (c) information which the Receiving Party can show was in the Receiving Party’s possession before the date of disclosure under this Agreement; (d) information that the Receiving Party can show was acquired by the Receiving Party from a third party who was not known by the Receiving Party to be under an obligation of confidence to the Disclosing Party; and (e) information

which the Receiving Party can show was independently developed by the Receiving Party without reference to Disclosing Party's Confidential Information.

4. **Disclosure Period and Termination.**

This Agreement controls Confidential Information which is disclosed from the Effective Date for a period of five (5) years at which time the Agreement will terminate unless extended in writing by both parties. The Receiving Party's duty of non-disclosure under this Agreement shall extend beyond the term of this Agreement for a period of five (5) years from the date of last disclosure. This Agreement may be terminated by either party upon thirty (30) days written notice to the other party. The parties agree that Confidential Information constituting a trade secret shall remain subject to the confidentiality obligations of this Agreement for so long as such Confidential Information qualifies as a trade secret under applicable law.

5. **Duty to Protect/Publicity.**

The Receiving Party shall protect the disclosed Confidential Information by using the same degree of care, but no less than a reasonable degree of care, to prevent the unauthorized use, dissemination or publication of the Confidential Information as the Receiving Party uses to protect its own Confidential Information of a similar nature. The Receiving Party (i) shall limit access to all Confidential Information to its employees, agents, representatives, consultants, contractors, and component/material suppliers approved by Customer who shall reasonably require access to the Confidential Information in order to achieve the Purpose, (ii) shall use the Confidential Information solely in connection with the Purpose, and (iii) shall use due diligence to insure that all such persons are aware of, understand their obligations under, and comply with, the provisions of this Agreement. Each party agrees not to publicize or disclose the existence or terms of this Agreement to any third party without the prior consent of the other party except as required by law (in which case, the party seeking to disclose the information shall give reasonable notice to the other party of its intent to make such a disclosure). Neither party shall make any press release or similar public statement without the prior consent of the other party.

6. **Court Orders.**

Nothing contained in this Agreement shall restrict the Receiving Party from disclosing Confidential Information that is required to be disclosed under any law, subpoena, or court order provided that the Receiving Party provides the Disclosing Party with prompt notice so that the Disclosing Party may, at its expense, seek a protective order or take other appropriate measures.

7. **No Further Rights or Duties Implied.**

The Disclosing Party does not warrant that the Confidential Information it discloses, either by itself or when combined with other information or when used in a particular manner, will be sufficient or suitable for the Receiving Party's purposes. The Confidential Information is provided "AS IS" with all faults. The Disclosing Party shall not be liable for the accuracy or completeness of the Confidential Information.

Nothing contained herein shall grant a license under any patent or other intellectual property right, nor shall this Agreement or any transmission of information constitute any representation or warranty to the Receiving Party with respect to infringement of any intellectual property rights of others.

The Disclosing Party has no obligation under this Agreement to purchase or sell any service or item from or to the Receiving Party.

The terms of confidentiality under this Agreement shall not be construed to limit either party's right to

independently develop or acquire products without use of the other party's Confidential Information. The Disclosing Party acknowledges that the Receiving Party may currently, or in the future, be developing information internally, or receiving information from other parties, that is similar to the Confidential Information. Accordingly, nothing in this Agreement will be construed as a representation or agreement that the Receiving Party will not develop or have developed for it, any products, concepts, systems or techniques that are similar to, or compete with, the products, concepts, systems or techniques contemplated by or embodied in the Confidential Information hereunder, provided that the Receiving Party does not violate any of its obligations under this Agreement in connection with such development.

The Receiving Party shall not reverse-engineer, de-compile, or disassemble any software disclosed to it and shall not remove, overprint, or deface any notice of copyright, trademark, logo, legend, or other notice of ownership from any originals or copies of Confidential Information it obtains from the Disclosing Party.

8. **Ownership/ Return of Confidential Information.**

The Disclosing Party shall remain the owner of all Confidential Information it discloses. Within ten (10) days after any written request by the Disclosing Party, the Receiving Party shall promptly return all copies of the Confidential Information except copies required for backup, disaster recovery, or business continuity and in such case the obligations hereunder shall survive until such copies are destroyed.

9. **Governing Law.**

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its conflicts of law principles. The parties agree that the state courts of Santa Clara County, California and the federal courts located in the Northern District of the State of California shall have exclusive jurisdiction and venue to adjudicate any and all disputes arising out of or in connection with this Agreement. The parties consent to the exercise by such courts of personal jurisdiction over them and each party waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine.

10. **Remedies.**

The Receiving Party agrees that its obligations hereunder are necessary and reasonable in order to protect the Disclosing Party and the Disclosing Party's business, and expressly agrees that monetary damages may be inadequate to compensate the Disclosing Party for any breach by either party of any covenants and agreements set forth herein. Accordingly, the Receiving Party agrees and acknowledges that any such violation or threatened violation may cause irreparable injury to the Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the Disclosing Party may be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach.

11. **Export Restrictions.**

The Receiving Party acknowledges its obligations to control access to technical data under the U.S. export laws and regulations and agrees to adhere to such laws and regulations with regard to any technical data received under this Agreement.

12. **Entire Agreement.**

This Agreement contains the complete and exclusive Agreement between the parties, and it is intended to be the final expression of their agreement. No promise, representation, warranty or covenant not included

in this Agreement has been or is relied upon by any party. Each party has relied upon its own examination of the warranties, representations and covenants expressly contained in the Agreement itself. No modification or amendment of this Agreement shall be of any force unless in writing executed by all parties hereto.

13. **Notices.**

Wherever one party is required to give written notice to the other under this Agreement, such notice will be given by hand, by certified U.S. mail, return receipt requested, by overnight courier, or by fax and addressed to the president of such party (with a copy to the Legal Department) at the address set forth in the preamble. All such notices shall be effective upon receipt. Either party may designate a different notice address from time to time upon giving five (5) days' prior written notice thereof to the other party.

14. **Assignment.**

Neither this Agreement nor any rights or obligations hereunder shall be transferred or assigned by either party without the written consent of the other party, which consent shall not be unreasonably withheld or delayed.

**SANMINA CORPORATION
DBA VIKING TECHNOLOGY**

[CUSTOMER]

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date Signed: _____

Date Signed: _____