



1           WHEREAS, Plaintiff Advanced Thermal Sciences Corporation (“ATS”)  
2 and Defendant Applied Materials, Inc. (“Applied”) (collectively “the parties”)  
3 are involved in the highly competitive business of developing, designing, and  
4 manufacturing components and equipment used in semiconductor wafer and flat  
5 panel display fabrication equipment;

6           WHEREAS, the parties agree that in the course of pre-trial discovery  
7 relating to issues of inventorship, development, and ownership of intellectual  
8 property, the parties will likely seek disclosure of technical information that  
9 contains highly confidential, trade secret, or proprietary information of the  
10 parties, which the parties have taken reasonable steps to maintain as trade  
11 secrets. For example, through document requests, interrogatories, and  
12 deposition testimony, the parties will likely seek discovery from each other that  
13 requires disclosure of highly confidential research and development procedures,  
14 technical product schematics and product operational descriptions;

15           WHEREAS, the parties agree that the disclosure of confidential  
16 proprietary information, including protected trade-secrets, during discovery in  
17 this case without appropriate confidentiality restrictions, or permitting  
18 unnecessary access to such confidential proprietary information, would  
19 substantially injure the disclosing party and provide a significant competitive  
20 advantage to competitors of the disclosing party;

21           WHEREAS, to expedite the flow of pre-trial discovery materials, protect  
22 the confidentiality of the trade secret and proprietary technical information,  
23 ensure that protection is afforded only to materials so entitled, facilitate the  
24 prompt resolution of disputes over confidentiality, and eliminate the need for  
25 repeated requests that the Court become directly involved in the discovery  
26 process; and

27           WHEREAS, the parties have established good cause for entry of such an  
28 Order;

1 IT IS HEREBY ORDERED:

2 **DEFINITIONS**

3 1. “Party”: any party to this action, including all of its officers, directors,  
4 employees, and those acting on its behalf.

5 2. “Material”: all items or information, regardless of the medium or  
6 manner generated, stored, or maintained, including but not limited to:  
7 documents or portions of documents; written discovery responses; electronic  
8 data; electronic copies of documents; trial testimony, deposition testimony and  
9 exhibits, and transcripts of trial testimony and depositions, including data,  
10 summaries, and compilations derived therefrom; designs, technical data, or  
11 drawings; and any portion of any documents, including court paper filed in this  
12 action, that quotes or summarizes any of these items.

13 3. “Designated Material”: any Material that has been designated as  
14 “CONFIDENTIAL,” “TDSF CONFIDENTIAL” or “HIGHLY  
15 CONFIDENTIAL – FOR ATTORNEYS AND CONSULTANTS ONLY”  
16 under this Order.

17 4. “CONFIDENTIAL” information, documents or things: information not  
18 generally known to others, and which the Designating Party (i) would not  
19 normally reveal to third parties except in confidence or has undertaken with  
20 others to maintain in confidence, or (ii) believes in good faith is protected by a  
21 right to privacy under federal or state law or any other applicable privilege or  
22 right related to confidentiality or privacy-

23 5. “TDSF CONFIDENTIAL” information is (i) technical information  
24 regarding manufacture, construction, development, function, or operation of any  
25 TDSF equipment, system or device created during the course of the TDSF  
26 Statement of Work that the Designating Party contends was “Jointly  
27 Developed” under the terms of the Joint Development Agreement; and (ii) filed  
28 patent applications relating to such technology.

1           6. “HIGHLY CONFIDENTIAL - ATTORNEYS AND CONSULTANTS  
2 ONLY” information, documents and things: information not generally known to  
3 others and having significant competitive or economic value such that the  
4 unrestricted disclosure to others would create a substantial risk of serious injury,  
5 and which the Designating Party (i) would not normally reveal to third parties  
6 except in confidence or has undertaken with others to maintain in confidence, or  
7 (ii) believes in good faith is protected by a right to privacy under federal or state  
8 law or any other applicable privilege or right related to confidentiality or  
9 privacy. “HIGHLY CONFIDENTIAL - ATTORNEYS AND CONSULTANTS  
10 ONLY” information may include, but is not limited to, the following:  
11 (i) technical information regarding manufacture, construction, development,  
12 function, or operation of any past, present, or future product or service other  
13 than the TDSF technology described in Paragraph 5; (ii) technical information  
14 regarding manufacture, construction, development, function, or operation of any  
15 TDSF equipment, system or device that the Designating Party contends was its  
16 “Pre-Existing IP” or its separately “Developed IP” under the terms of the Joint  
17 Development Agreement; (iii) financial information, such as pricing, income,  
18 profits, losses, expenses, costs, overhead, royalty rates, or sales quantities  
19 relating to any past, present, or future product or service; (iv) contractual  
20 relationships with third parties, including, but not limited to, agreements in  
21 settlement of litigation; (v) business, financial or marketing plans, projections,  
22 or data; (vi) the identity of customers or suppliers; (vii) research and  
23 development materials, including product and market research; (viii)  
24 unpublished patent applications other than those covering the TDSF technology  
25 described in Paragraph 5; (ix) trade secrets; and (x) documents that contain,  
26 disclose, or reflect confidential business, commercial, financial, or other  
27 similarly sensitive information of a non-public nature.

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1           7. “Producing Party”: a Party or non-party that produces Material in this  
2 action.

3           8. “Receiving Party”: a Party that receives Material from a Producing  
4 Party.

5           9. “Designating Party”: a Party or non-party that designates information,  
6 documents, or things that are produced in disclosures, responses to discovery, or  
7 otherwise in the course of this action as “CONFIDENTIAL,” “TDSF  
8 CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS AND  
9 CONSULTANTS ONLY,” or which a Party designates pursuant to Paragraph  
10 15(e). Non-Parties that produce Material in this action may designate Material  
11 under this Protective Order in the same manner as Parties.

12           10. “Outside Counsel”: the law firms identified below, and attorneys,  
13 paralegals, secretaries, and other support staff employed in the law firms to  
14 whom it is reasonably necessary to disclose the information for this litigation:

15           KNOBBE, MARTENS, OLSON & BEAR, LLP

16           JACKSON DEMARCO TIDUS PECKENPAUGH

17           SQUIRE, SANDERS & DEMPSEY LLP

18           ORRICK, HERRINGTON & SUTCLIFFE LLP

19           11. “Outside Consultant”: a person with specialized knowledge or  
20 experience in a matter pertinent to the litigation who has been retained by a  
21 Party or Counsel of Record to serve as an expert witness or as a consultant in  
22 this action and who is not a current employee of a Party or a direct competitor of  
23 the opposing Party with regard to temperature control systems for  
24 semiconductor applications and who, at the time of retention, is not anticipated  
25 to become an employee of a Party or a direct competitor of the opposing Party  
26 with regard to temperature control systems for semiconductor applications.

27           12. “Professional Vendors”: persons or entities that provide litigation  
28 support services (e.g. photocopying; videotaping; translating; designing or

1 preparing exhibits or demonstratives; organizing, storing, retrieving data in any  
2 form or medium; etc.) and their employees and subcontractors. This definition  
3 includes a professional jury consultant or trial consultant retained in connection  
4 with this litigation and does not include consultants who fall within the  
5 definition of Outside Consultant.

### 6 **SCOPE**

7 13. The protections conferred by this Order cover not only Designated  
8 Material (as defined above), but also any information copied or extracted  
9 therefrom, as well as any copies, excerpts, summaries, or compilations thereof  
10 and testimony and oral conversation disclosing CONFIDENTIAL, TDSF  
11 CONFIDENTIAL or HIGHLY CONFIDENTIAL - ATTORNEYS AND  
12 CONSULTANTS ONLY information.

### 13 **PROCEDURE FOR DESIGNATING MATERIALS AND TESTIMONY**

14 14. Subject to the limitations set forth in this Order, a Designating  
15 Party may designate as “CONFIDENTIAL” information the Designating Party  
16 believes in good faith meets the definition set forth in Paragraph 4 above, a  
17 Designating Party may designate as “TDSF CONFIDENTIAL” information the  
18 Designating Party believes in good faith meets the definition set forth in  
19 Paragraph 5 above, and a Designating Party may designate as “HIGHLY  
20 CONFIDENTIAL - ATTORNEYS AND CONSULTANTS ONLY”  
21 information the Designating Party believes in good faith meets the definition set  
22 forth in Paragraph 6 above.

23 15. Except as otherwise provided in this Order or as otherwise  
24 stipulated or ordered, material that qualifies for protection under this Order shall  
25 be designated in accordance with Paragraph 16 before the material is disclosed,  
26 produced, or filed.

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1           16. Designation in conformity with this Order requires:

2           (a) Documents: For information in documentary form (apart from  
3 transcripts of depositions or other pretrial or trial proceedings), the Producing  
4 Party shall affix the legend “CONFIDENTIAL,” “TDSF CONFIDENTIAL” or  
5 “HIGHLY CONFIDENTIAL - ATTORNEYS AND CONSULTANTS ONLY”  
6 on the first page and each page that contains Designated Material. This includes  
7 (1) written responses to interrogatories or requests for admission and (2)  
8 declarations and pleadings. However, in the event a Producing Party elects to  
9 produce documents and things for inspection, no designation need be made prior  
10 to the inspection. For purposes of such inspection, all documents and things  
11 shall be considered subject to the protections afforded documents and things  
12 labeled “HIGHLY CONFIDENTIAL - ATTORNEYS AND CONSULTANTS  
13 ONLY.” Upon request for copying of any items so inspected, the Producing  
14 Party shall designate such documents with the appropriate designation before  
15 copies are delivered to the Receiving Party;

16           (b) Testimony: For testimony given in deposition or in other  
17 pretrial or trial proceedings, the Designating Party shall identify on the record  
18 during the deposition, hearing, or other proceeding, or within thirty (30)  
19 calendar days thereof, that specific portions or the entire transcript be designated  
20 as “CONFIDENTIAL” “TDSF CONFIDENTIAL” or “HIGHLY  
21 CONFIDENTIAL - ATTORNEYS AND CONSULTANTS ONLY.” Written  
22 transcripts of Testimony shall be designated in the same manner as other  
23 documents in accordance with Paragraph 16(a).

24           (c) For other oral disclosures, the Designating Party shall give  
25 notice, within ten (10) calendar days of such disclosure, in writing (by facsimile  
26 and email) identifying all protected disclosures and specifying which aspects of  
27 those disclosures it wishes to designate as “CONFIDENTIAL,” “TDSF  
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1 CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS AND  
2 CONSULTANTS ONLY.”

3 (d) For any other tangible items, the Producing Party shall affix in  
4 a prominent place on the exterior of the item or container(s) in which the  
5 information or thing is stored the legend “CONFIDENTIAL,” “TDSF  
6 CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS AND  
7 CONSULTANTS ONLY.”

8 (e) If a Producing Party produces Material containing  
9 “CONFIDENTIAL,” “TDSF CONFIDENTIAL” or “HIGHLY  
10 CONFIDENTIAL - ATTORNEYS AND CONSULTANTS ONLY”  
11 information of another Party without appropriate designation, a non-Producing  
12 Party may Designate such Material by providing notice to all parties to this  
13 action and to the Producing Party, identifying with particularity the Designated  
14 Material to be designated (either by production numbers or by providing other  
15 adequate identification of the specific Designated Material), within twenty (20)  
16 court days from the date that the Designating Party receives copies of the  
17 Designated Material from the Producing Party.

18 17. Each Designating Party retains the right to re-designate Designated  
19 Material under this Order and to have such re-designated Material treated in  
20 accord with such designations from that time forward, subject to the right of the  
21 Receiving Party to challenge the propriety of such designation(s) as provided  
22 herein.

23 **INADVERTENT FAILURE TO DESIGNATE**

24 18. The inadvertent production of information without an appropriate  
25 designation of confidentiality shall not be deemed a waiver of the confidential  
26 nature of any such information. Inadvertent failure to designate documents or  
27 information subject to the attorney-client privilege, work product immunity, or  
28 any other applicable privilege or immunity shall not preclude the Producing



1 Party from asserting that the production was inadvertent in accordance with  
2 Paragraphs 46-48.

3 19. Upon discovery of an inadvertent failure to designate, a  
4 Designating Party may notify the Receiving Party (by fax and email) that the  
5 Material is to be designated as “CONFIDENTIAL,” “TDSF CONFIDENTIAL”  
6 or “HIGHLY CONFIDENTIAL - ATTORNEYS AND CONSULTANTS  
7 ONLY.” Upon receipt of such notice, the Receiving Party must make  
8 reasonable efforts to assure that the material is treated in accordance with the  
9 terms of this Order, subject to the right to challenge the propriety of such  
10 designation(s) as provided herein.

#### 11 **USE OF DESIGNATED MATERIAL**

12 20. Use of Designated Material By Receiving Party: Designated  
13 Material shall be used by the Receiving Party only for purposes of this  
14 litigation. Designated Material shall not be used or in any way disclosed by the  
15 Receiving Party except as provided under the terms of this Order.

16 21. Use of Designated Material By Designating Party: Nothing in this  
17 Order shall limit any Designating Party’s use of its own documents and  
18 information, nor shall it prevent the Designating Party from disclosing its own  
19 confidential information, documents or things to any person. Such disclosure  
20 shall not affect any designations made pursuant to the terms of this Order, so  
21 long as the disclosure is made in a manner that is reasonably calculated to  
22 maintain the confidentiality of the information.

#### 23 **ACCESS TO DESIGNATED MATERIAL**

24 22. Disclosure of Information, Documents and Things Designated  
25 “CONFIDENTIAL.” Unless otherwise ordered by the Court or permitted in  
26 writing by the Designating Party, a Receiving Party may disclose any  
27 information, document or thing designated “CONFIDENTIAL” only to:

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1 (a) two in-house counsel designees, whose job responsibilities  
2 include litigation supervision and not the preparation or supervision of the  
3 preparation of patent applications, designated by the Receiving Party, who have  
4 signed the “Acknowledgment and Nondisclosure Agreement” attached hereto as  
5 Exhibit A, and their paralegals, secretaries, and other legal support staff to  
6 whom disclosure is reasonably necessary. The Receiving Party must identify  
7 the in-house counsel designees to the Producing Party and produce a signed  
8 copy of the “Acknowledgment and Nondisclosure Agreement” prior to the  
9 disclosure of any CONFIDENTIAL Designated Materials to the designee;

10 (b) employees of the Receiving Party who’s participation in the  
11 litigation the Receiving Party believes in good faith is reasonably necessary to  
12 the prosecution of this action and who have signed the “Acknowledgment and  
13 Nondisclosure Agreement” attached hereto as Exhibit A. The Receiving Party  
14 must identify such employees to the Producing Party and produce a signed copy  
15 of the “Acknowledgment and Nondisclosure Agreement” prior to the disclosure  
16 of any CONFIDENTIAL Designated Materials to such employees;

17 (c) persons who appear on the face of the Designated Material  
18 as an author, addressee or recipient thereof;

19 (d) Outside Counsel identified in Paragraph 10 above;

20 (e) Outside Consultants of the Receiving Party to whom  
21 disclosure is reasonably necessary for this litigation and who have signed the  
22 “Acknowledgment and Nondisclosure Agreement” attached hereto as Exhibit A  
23 and the “Certification of Consultant” attached hereto as Exhibit B, and who  
24 have been approved to access such Material as set forth in Paragraphs 28-31.

25 (f) the Court and its personnel in this action;

26 (g) any designated arbitrator or mediator who is assigned to hear  
27 this matter, and his or her staff who have signed the “Acknowledgment and  
28 Nondisclosure Agreement” attached hereto as Exhibit A;

1 (h) court reporters; and

2 (i) Professional Vendors (and their staffs) to which disclosure is  
3 reasonably necessary for this litigation and a representative of which has signed  
4 the “Acknowledgment and Nondisclosure Agreement” attached hereto as  
5 Exhibit A.

6 23. Disclosure of Information, Documents and Things Designated  
7 “TDSF CONFIDENTIAL.” Unless otherwise ordered by the Court or permitted  
8 in writing by the Designating Party, a Receiving Party may disclose any  
9 information, document or thing designated “TDSF CONFIDENTIAL” only to:

10 (a) two in-house counsel designees, whose job responsibilities  
11 include litigation supervision and not the preparation or supervision of the  
12 preparation of patent applications, designated by the Receiving Party, who have  
13 signed the “Acknowledgment and Nondisclosure Agreement” attached hereto as  
14 Exhibit A, and their paralegals, secretaries, and other legal support staff to  
15 whom disclosure is reasonably necessary. The Receiving Party must identify  
16 the in-house counsel designees to the Producing Party and produce a signed  
17 copy of the “Acknowledgment and Nondisclosure Agreement” prior to the  
18 disclosure of any TDSF CONFIDENTIAL Designated Materials to the  
19 designee;

20 (b) two in-house technical designees who were involved in the  
21 Project described in the TDSF Statement of Work and who have signed the  
22 “Acknowledgment and Nondisclosure Agreement” attached hereto as Exhibit A.  
23 The Receiving Party must identify the in-house technical designees to the  
24 Producing Party and produce a signed copy of the “Acknowledgment and  
25 Nondisclosure Agreement” prior to the disclosure of any TDSF  
26 CONFIDENTIAL Designated Materials to the designee;

27 (c) persons who appear on the face of the Designated Material  
28 as an author, addressee or recipient thereof;

- 1 (d) Outside Counsel identified in Paragraph 10 above;
- 2 (e) Outside Consultants of the Receiving Party to whom
- 3 disclosure is reasonably necessary for this litigation and who have signed the
- 4 “Acknowledgment and Nondisclosure Agreement” attached hereto as Exhibit A
- 5 and the “Certification of Consultant” attached hereto as Exhibit B, and who
- 6 have been approved to access such Material as set forth in Paragraphs 28-31.
- 7 (f) the Court and its personnel in this action;
- 8 (g) any designated arbitrator or mediator who is assigned to hear
- 9 this matter, and his or her staff who have signed the “Acknowledgment and
- 10 Nondisclosure Agreement” attached hereto as Exhibit A;
- 11 (h) court reporters; and
- 12 (i) Professional Vendors (and their staffs) to which disclosure is
- 13 reasonably necessary for this litigation and a representative of which has signed
- 14 the “Acknowledgment and Nondisclosure Agreement” attached hereto as
- 15 Exhibit A.

16 24. Disclosure of Information, Documents and Things Designated  
17 “HIGHLY CONFIDENTIAL -ATTORNEYS AND CONSULTANTS ONLY.”  
18 Unless otherwise ordered by the Court or permitted in writing by the  
19 Designating Party, a Receiving Party may disclose any information, document  
20 or thing designated “HIGHLY CONFIDENTIAL -ATTORNEYS AND  
21 CONSULTANTS ONLY” only to:

- 22 (a) two in-house counsel designees, whose job responsibilities
- 23 include litigation supervision and not the preparation or supervision of the
- 24 preparation of patent applications, designated by the Receiving Party, who have
- 25 signed the “Acknowledgment and Nondisclosure Agreement” attached hereto as
- 26 Exhibit A, and their paralegals, secretaries, and other legal support staff to
- 27 whom disclosure is reasonably necessary. The Receiving Party must identify
- 28 the in-house counsel designees to the Producing Party and produce a signed

1 copy of the “Acknowledgment and Nondisclosure Agreement” prior to the  
2 disclosure of any HIGHLY CONFIDENTIAL – ATTORNEYS AND  
3 CONSULTANTS ONLY Designated Materials to the designee;

4 (b) persons who appear on the face of the Designated Material  
5 as an author, addressee or recipient thereof;

6 (c) Outside Counsel identified in Paragraph 10 above;

7 (d) Outside Consultants of the Receiving Party to whom  
8 disclosure is reasonably necessary for this litigation and who have signed the  
9 “Acknowledgment and Nondisclosure Agreement” attached hereto as Exhibit A  
10 and the “Certification of Consultant” attached hereto as Exhibit B, and who  
11 have been approved to access such Material as set forth in Sections 28-31.

12 (e) the Court and its personnel in this action;

13 (f) any designated arbitrator or mediator who is assigned to hear  
14 this matter, and his or her staff who have signed the “Acknowledgment and  
15 Nondisclosure Agreement” attached hereto as Exhibit A;

16 (g) court reporters; and

17 (h) Professional Vendors (and their staffs) to which disclosure is  
18 reasonably necessary for this litigation and a representative of which has signed  
19 the “Acknowledgment and Nondisclosure Agreement” attached hereto as  
20 Exhibit A.

21 25. A person may be examined as a witness at a deposition, hearing or  
22 trial and may testify concerning CONFIDENTIAL, TDSF CONFIDENTIAL  
23 and HIGHLY CONFIDENTIAL ATTORNEYS AND CONSULTANTS ONLY  
24 Designated Material, and the information contained therein, as follows:

25 (a) A present employee of a Party may be examined and may  
26 testify regarding CONFIDENTIAL, TDSF CONFIDENTIAL and HIGHLY  
27 CONFIDENTIAL ATTORNEYS AND CONSULTANTS ONLY Designated  
28 Material produced by that Party;

1 (b) A past employee of a Party may be examined and may testify  
2 regarding CONFIDENTIAL, TDSF CONFIDENTIAL and HIGHLY  
3 CONFIDENTIAL ATTORNEYS AND CONSULTANTS ONLY Designated  
4 Material produced by that Party that pertains to the period(s) of employment of  
5 that employee by the Party; and

6 (c) A present or former consultant to a Party may be examined and  
7 may testify regarding CONFIDENTIAL, TDSF CONFIDENTIAL and  
8 HIGHLY CONFIDENTIAL ATTORNEYS AND CONSULTANTS ONLY  
9 Designated Material produced by that Party that pertains to the subject matter of  
10 his or her consultation.

11 No witness may retain copies of any such Designated Material  
12 unless permitted by other provisions of this Order.

13 26. All Designated Material shall be maintained at a location and under  
14 circumstances to ensure that access is limited to those persons entitled to have  
15 access under this Order. Under no circumstance is Designated Material marked  
16 "HIGHLY CONFIDENTIAL ATTORNEYS AND CONSULTANTS ONLY"  
17 to be maintained on the premises of the Receiving Party unless it is maintained  
18 in a location to which only the in-house counsel designees identified in  
19 paragraphs 22(a), 23(a), and 24(a) and their legal support staff have access.

20 27. At the request of the Designating Party, persons not permitted  
21 access to Designated Material under the terms of this Order shall not be present  
22 at depositions while the Designating Party's Designated Material is discussed or  
23 otherwise disclosed. To the extent reasonably possible, pre-trial (including  
24 motion practice before the Court) and trial proceedings shall be conducted in a  
25 manner, subject to the supervision of the Court, to protect Designated Material  
26 from disclosure to persons not authorized to have access to such Designated  
27 Material. Any Party intending to disclose or discuss Designated Material in  
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1 open Court during pretrial or trial proceedings shall provide written notice to the  
2 Designating Party at least seventy-two (72) hours prior to such disclosure.

3 **ACCESS BY OUTSIDE CONSULTANTS**

4 28. Notice. If a Receiving Party wishes to disclose another party's  
5 Designated Material to any Outside Consultant, such Receiving Party must  
6 provide notice to counsel for the Designating Party, which notice shall include:  
7 (a) the full name and professional address and/or affiliation of the Outside  
8 Consultant, (b) a current copy of the Outside Consultant's *curriculum vitae* or  
9 resume; (c) his or her prior employment or consultancies for the previous five  
10 years, (d) all of the person's other present employment or consultancies in the  
11 field, (e) all of the person's past litigation-related activities, identifying the party  
12 for whom the person consulted and the nature of the case; (f) any relationship  
13 between the person and any Party to this action, past or present; and (g) whether  
14 he or she has ever been found by any court, arbitrator, or other tribunal to have  
15 violated any court order. The Notice shall also include declarations, in  
16 substantially the form attached hereto as Exhibits A and B, executed by the  
17 Outside Consultant and agreeing to be bound by the terms of this Protective  
18 Order.

19 29. Objections. The Designating Party shall have five (5) court days  
20 from receipt of such notice to object in writing (by fax and email) to such  
21 disclosure. Any such objection must set forth in detail the grounds on which it  
22 is based. After the expiration of the 5-day period, if no objection has been  
23 asserted, then Designated Material may be disclosed to the Outside Consultant  
24 pursuant to the terms of this Order.

25 30. Meet and Confer. A Party that receives a timely written objection  
26 (as set forth in Paragraph 29) must meet and confer with the objecting Party to  
27 try to resolve the matter by agreement. Approval by the objecting Party shall  
28 not be unreasonably withheld







1 version of its filing and seek to have the Designated Material filed under seal in  
2 accordance with Local Rule 79-5.

3 39. All Designated Material that is filed or lodged with the Court shall  
4 be filed or lodged in a sealed envelope on which shall be affixed a cover page.  
5 The cover page shall include the words “CONFIDENTIAL,” “TDSF  
6 CONFIDENTIAL” or “HIGHLY CONFIDENTIAL - ATTORNEYS AND  
7 CONSULTANTS ONLY” as appropriate and a legend substantially in the  
8 following form:

9 This sealed container contains confidential materials generally  
10 identified as [“CONFIDENTIAL,” “TDSF CONFIDENTIAL”  
11 or “ATTORNEYS AND CONSULTANTS ONLY”] pursuant  
12 to the Protective Order in *Advanced Thermal Sciences  
13 Corporation v. Applied Materials, Inc.*, Civ Action No. SACV  
14 07-1384 JVS (JWJx) (CDCA-Southern Div.) This envelope  
15 shall not be opened nor the contents thereof revealed except by  
16 the Court, including court personnel as necessary for handling  
of the matter, or as directed by further Order of the Court.  
After any such opening or revelation, the envelope shall be  
resealed with the contents inside.

17 40. **Unless otherwise ordered by the Court**, Designated Material  
18 used or disclosed in a court proceeding in connection with this litigation that is  
19 not made part of the public record shall not lose its Confidential Information  
20 status merely as a result of such use, and the Parties shall take all steps  
21 reasonably required to protect its confidentiality during such use.

### 22 **OBJECTIONS TO DESIGNATIONS**

23 41. Timing of Objections. At any stage of these proceedings, any party  
24 may object to a designation of Designated Material, including deposition  
25 transcripts and portions therefore, as “CONFIDENTIAL,” “TDSF  
26 CONFIDENTIAL” or “HIGHLY CONFIDENTIAL -ATTORNEYS AND  
27 CONSULTANTS ONLY.”

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1           42. Meet and Confer. A Party that challenges a Designating Party’s  
2 confidentiality designation must do so in good faith and must begin the process  
3 by meeting and conferring with counsel for the Designating Party.

4           43. Judicial Intervention. A Party that elects to press a challenge to a  
5 confidentiality designation after considering the justification offered by the  
6 Designating Party may file and serve a motion that identifies the challenged  
7 Designated Material and sets forth in detail the basis for the challenge. The  
8 burden of persuasion in any such challenge proceeding shall be on the  
9 Designating Party. Until the Court rules on the challenge or it is otherwise  
10 resolved by the parties, all parties shall continue to afford the Designated  
11 Material in question the level of protection to which it is entitled under the  
12 Designating Party’s designation.

13                           **PROTECTED DESIGNATED MATERIAL SUBPOENAED,**  
14                           **REQUESTED, OR ORDERED PRODUCED IN OTHER LITIGATION**

15           44. If a Receiving Party, other than in the proceedings in this action, is  
16 served with (a) a subpoena or court order compelling or (b) a discovery request  
17 seeking disclosure of any information, documents, or things designated in this  
18 action as “CONFIDENTIAL,” “TDSF CONFIDENTIAL” or “HIGHLY  
19 CONFIDENTIAL - ATTORNEYS AND CONSULTANTS ONLY,” the  
20 Receiving Party must so notify the Designating Party, in writing (by both fax  
21 and email) promptly and in no event more than ten (10) calendar days after  
22 receiving the subpoena, discovery request, or order. Such notification must  
23 include a copy of the subpoena, discovery request, or order. The Receiving  
24 Party also must immediately inform in writing the person or entity who caused  
25 the subpoena, discovery request, or order to issue that some or all the  
26 Designated Material covered by the subpoena, discovery request, or order is the  
27 subject of this Order. In addition, the Receiving Party must deliver a copy of  
28 this Stipulated Protective Order promptly to the person or entity in the other

1 action that caused the subpoena, discovery request, or order to issue. The  
2 purpose of imposing these duties is to alert the interested parties to the existence  
3 of this Order and to afford the Designating Party in this case an opportunity to  
4 try to protect its confidentiality interests in the court from which the subpoena  
5 or order issued or in the proceeding in relation to which the discovery request  
6 was propounded. The Designating Party shall bear the burdens and the  
7 expenses of seeking protection in that court or proceeding of its confidential  
8 material, and nothing in these provisions should be construed as authorizing or  
9 encouraging a Receiving Party in this action to disobey a lawful directive from  
10 another court. However, a Receiving Party shall not, in response to any  
11 discovery request, disclose any Designated Materials designated in this action as  
12 “CONFIDENTIAL,” “TDSF CONFIDENTIAL” or “HIGHLY  
13 CONFIDENTIAL - ATTORNEYS AND CONSULTANTS ONLY” absent  
14 permission of the Designating Party or a lawful directive from a court.

15 **UNAUTHORIZED DISCLOSURE OF DESIGNATED MATERIAL**

16 45. If a Receiving Party learns that, by inadvertence or otherwise, it has  
17 disclosed Designated Material to any person or in any circumstance not  
18 authorized under this Order, the Receiving Party must immediately (a) notify in  
19 writing the Designating Party of the unauthorized disclosures, (b) use its best  
20 efforts to retrieve all copies of the Designated Material, (c) inform the person or  
21 persons to whom unauthorized disclosures were made of all the terms of this  
22 Order, and (d) request such person or persons to execute the “Acknowledgment  
23 and Nondisclosure Agreement” that is attached hereto as Exhibit A.

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1                    **INADVERTENT PRODUCTION OF DESIGNATED MATERIAL**  
2                    **SUBJECT TO THE ATTORNEY-CLIENT PRIVILEGE, WORK**  
3                    **PRODUCT IMMUNITY, OR OTHER PRIVILEGE OR IMMUNITY**

4                    46. Inadvertent production of documents or information subject to the  
5 attorney-client privilege, work product immunity, or any other applicable  
6 privilege or immunity shall not constitute a waiver of such privilege(s).

7                    47. Upon receiving written notice from the producing party that  
8 Designated Material subject to a privilege or immunity has been inadvertently  
9 produced along with a supplemental privilege log identifying the Designated  
10 Material and the basis for the claims of privilege or immunity, the receiving  
11 party shall not copy or disseminate such Designated Material. The receiving  
12 party shall return all originals and copies of the Designated Material (or certify  
13 in writing to their destruction) within fourteen (14) days of receiving the  
14 producing party's written request, unless the receiving party has a good faith  
15 basis for asserting that the information is not protected by any privilege or  
16 immunity. If the receiving party believes it has a good faith basis for  
17 challenging the privilege claim, the receiving party may notify the producing  
18 party that it will retain one copy of such Designated Material for the limited  
19 purpose of submitting it under seal to the Court for review. The parties shall  
20 meet and confer within five (5) business days regarding the dispute and if the  
21 parties are unable to resolve the dispute, the receiving party must either file a  
22 motion to compel within thirty (30) days after the meet and confer or return or  
23 destroy the last copy of the document.

24                    48. Once inadvertently produced material has been used during a  
25 deposition, used as an exhibit to a pleading filed with the Court, identified for  
26 use at trial or otherwise disclosed to the Court, the producing party has three (3)  
27 weeks from the date of disclosure to provide notice of the inadvertent  
28 production. Notwithstanding any other provision of this Order, failure to

1 provide notice within this three (3) week period shall constitute a waiver of any  
2 and all applicable privileges with respect to the inadvertently produced material  
3 only.

#### 4 **DURATION**

5 49. Even after the termination of this action, the confidentiality  
6 obligations imposed by this Order shall remain in effect until a Designating  
7 Party agrees otherwise in writing or a court order otherwise directs. All  
8 attorneys, vendors, consultants, and other persons that are shown Designated  
9 Material under the terms of this Protective Order shall submit to the jurisdiction  
10 of this Court for the purpose of enforcing the terms of this Stipulated Protective  
11 Order, even if such enforcement proceedings occur after termination of this  
12 action.

#### 13 **FINAL DISPOSITION**

14 50. Unless otherwise ordered or agreed in writing by the Producing  
15 Party, within sixty (60) calendar days after the final termination of this action,  
16 each Receiving Party must destroy or return all Designated Material to the  
17 Producing Party. As used in this Paragraph, "all Designated Material" includes  
18 all copies, abstracts, compilations, summaries or any other form of reproducing  
19 or capturing any of the Designated Material. The Receiving Party must submit  
20 a written certification to the Producing Party (and, if not the same person or  
21 entity, to the Designating Party) by the 60-day deadline that affirms (i) that all  
22 Designated Material has been destroyed or returned, and (ii) that the Receiving  
23 Party has not retained any copies, abstracts, compilations, summaries or other  
24 forms of reproducing or capturing any of the Designated Material.  
25 Notwithstanding this provision, Counsel of Record may retain an archival copy  
26 of all pleadings, motion papers, transcripts, legal memoranda, correspondence or  
27 attorney work product, even if such materials contain Designated Material. Any  
28 such archival copies that contain or constitute Designated Material remain

1 subject to this Order as set forth in Paragraph 49 (Duration), above. **The Court**  
2 **and its personnel are not subject to this or any other provision of this**  
3 **agreement.**

#### 4 MISCELLANEOUS

5 51. Right to Further Relief. Nothing in this Order abridges the right of  
6 any person to seek its modification by the Court in the future. Any such effort  
7 to modify the Order shall be made in the form of a written stipulation if agreed  
8 to by all Parties or by way of a noticed motion served and filed in accordance  
9 with statutory requirements and local court rules.

10 52. No Diminishing Of Existing Rights. This Order shall not diminish  
11 any existing obligation or right with respect to Designated Material, including  
12 evidentiary rights, the attorney-client privilege, work product protection, or  
13 comparable privileges, nor shall it prevent a disclosure to which the Designating  
14 Party consents in writing before the disclosure takes place.

15 53. No Waiver. Other than as specified herein, the taking of or the  
16 failure to take any action to enforce the provisions of this Order, or the failure to  
17 object to any designation or any such action or omission, shall not constitute a  
18 waiver of any right to seek and obtain protection or relief in this action or any  
19 other action, such right including, but not limited to, the right to claim that any  
20 information is or is not proprietary to any Party, is or is not entitled to particular  
21 protection, or does or does not embody trade secrets of any Party. The  
22 procedures set forth herein shall not affect the rights of Parties to object to  
23 discovery on grounds other than those related to trade secrets or proprietary  
24 information claims, nor shall it relieve a Party of the necessity of proper  
25 response to discovery devices.

26 54. No Probative Value. The recitals and terms of this Order are not  
27 factual or legal admissions regarding any substantive issues and shall not be  
28 admitted as evidence of any substantive fact or contention. This Order shall not

1 abrogate or diminish any contractual, statutory, or other legal obligation or right  
2 of any Party or person with respect to any Designated Material. Designating  
3 Material under this Order shall not be deemed to be determinative of what a trier  
4 of fact may determine to be confidential or proprietary. This Order shall not  
5 prejudice the right of any Party to dispute whether particular information or  
6 material is or is not: (a) confidential; (b) entitled to a greater or lesser degree of  
7 protection than provided hereunder; or (c) relevant to any issue of this case,  
8 provided that in doing so the party complies with the foregoing procedures.  
9 Absent a stipulation of all Parties, the fact that information has been designated  
10 “CONFIDENTIAL,” “TDSF CONFIDENTIAL” or “HIGHLY  
11 CONFIDENTIAL - ATTORNEYS AND CONSULTANTS ONLY” under this  
12 Order shall not be admissible during the trial of this action, nor shall the jury be  
13 advised of such designation.

14 55. Rendering Legal Advice To Clients. Nothing in this Order shall  
15 bar or otherwise restrict any attorney from rendering advice to his or her client  
16 with respect to this litigation and, in the course of rendering advice, referring to  
17 or relying generally on the examination of Designated Material obtained from  
18 another Party; provided, however, that in rendering such advice and in otherwise  
19 communicating with his is her client, the attorney shall not disclose the contents  
20 of any Designated Material obtained from another Party if that disclosure would  
21 be contrary to the terms of this Order.

22 56. Non-Applicability Of Restrictions. The restrictions as to use or  
23 dissemination of information, documents or things, set forth in this Order shall  
24 not apply as to any information that (a) at the time of the designation under this  
25 Order was generally available to the public; (b) after designation under this  
26 Order becomes available to the public through no act, or failure to act,  
27 attributable to the Receiving Party or its counsel; or (c) the Receiving Party, its  
28 counsel, or any recipient of Designated Material under this Order can show as a



1 matter of written record was already known to the Receiving Party through  
2 means other than misappropriation as defined in the California Uniform Trade  
3 Secrets Act or any violation of law.

4 57. Notice. Any notice or objection to be provided under this Order  
5 shall be provided by both facsimile and email as set forth below. The first page  
6 of any such notice or objection shall use the caption for this action.

7 To Plaintiff: Facsimile: (949) 760-9502 (Attn: Joseph Re and  
8 Benjamin Katzenellenbogen);  
9 Email: 2jrr@kmob.com; 2bak@kmob.com

10 To Defendant: Facsimile: (650) 614-7401 (Attn: Michael Heafey and  
11 Jan Ellard);  
12 Email: mheafey@orrick.com; jellard@orrick.com

13 Any Party may modify its facsimile and email information by providing notice  
14 to the other Parties in accordance with this provision.

15 58. Right to Protective Order. Nothing in this Order shall prejudice the  
16 rights of the parties to present a motion to the Court under Rule 26(c) of the  
17 Federal Rules of Civil Procedure for a separate protective order as to any  
18 particular document or information, including restrictions differing from those  
19 specified herein. This Order shall not be deemed to prejudice the parties in any  
20 way in any future application for modification of this order.

21 59. No Admission of Discoverability. This Order shall not prejudice  
22 the right of any party to oppose production of any information for lack of  
23 relevance or any other ground other than the mere presence of confidential  
24 information. Similarly, no Party waives any right to object on any ground to the  
25 use in evidence of any of the material covered by this Order. The existence of  
26 this Order shall not be used by either party as a basis for seeking discovery that  
27 is otherwise not proper under the Federal Rules of Civil Procedure.

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2           60.   Modification of Order. This Order may be modified by agreement  
3 of the parties, subject to approval by the Court.

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5   **IT IS SO ORDERED.**

6   Dated: September 10, 2008

\_\_\_\_\_ /s/

THE HONORABLE JEFFREY W. JOHNSON  
UNITED STATES DISTRICT COURT  
MAGISTRATE JUDGE

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9   Presented by:

10   KNOBBE, MARTENS, OLSON & BEAR, LLP

11   By: s/Benjamin A. Katzenellenbogen

12       Joseph R. Re  
13       Benjamin A. Katzenellenbogen  
14       Colin B. Heideman

15   JACKSON DEMARCO TIDUS PECKENPAUGH  
16   Ryan M. Patch (State Bar No. 128,042)  
17   rpatch@jdtplaw.com  
18   2030 Main Street, 12<sup>th</sup> Floor  
19   Irvine, CA 92614  
20   Telephone: (949) 752-8585  
21   Facsimile: (949) 752-0597

22   SQUIRE, SANDERS & DEMPSEY L.L.P.  
23   Steven A. Lamb (State Bar No. 132,534)  
24   slamb@ssd.com  
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26   Los Angeles, CA 90071  
27   Telephone: (213) 624-4500  
28   Facsimile: (213) 623-4581

Attorneys for Plaintiff/Counterdefendant, ADVANCED  
THERMAL SCIENCES CORPORATION

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**EXHIBIT A**

**ACKNOWLEDGMENT AND NONDISCLOSURE AGREEMENT**

I, \_\_\_\_\_, do solemnly swear or affirm that I have been provided with and have read the Stipulated Protective Order regarding confidentiality in Advanced Thermal Sciences Corporation v. Applied Materials, Inc., Civil Action No. SACV 07-1384 JVS (JWJx).

I expressly agree that I will not disclose any information received by me pursuant to the Stipulated Protective Order and I agree to be bound by its terms as ordered by the Court. I understand that if I violate the terms of the Protective Order, I may be subject to an enforcement proceeding before the Court, and I will comply with and be bound by the terms and conditions of said Order unless and until modified by further order of the Court.

I hereby consent to the jurisdiction of the United States District Court for the Central District of California for purposes of enforcing this Order.

Dated: \_\_\_\_\_ By: \_\_\_\_\_

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**EXHIBIT B**  
**CERTIFICATION OF CONSULTANT**

I, \_\_\_\_\_ [print or  
type full name], of \_\_\_\_\_ [print  
or type full address], declare under penalty of perjury that I have read in its  
entirety and understand the Stipulated Protective Order that was issued by the  
United States District Court for the Central District of California, Southern  
Division, on \_\_\_\_\_ [date] in the case of Advanced Thermal Sciences  
Corporation v. Applied Materials, Inc., Civil Action No. SACV 07-1384 JVS  
(JWJx) (the “Action”), and that I have executed an “Acknowledgment And  
Agreement To Be Bound By Protective Order.”

I further certify that I am not an employee of the Party who  
retained me, or of a competitor of the opposing Party. If at any time after I  
execute this Certificate of Consultant and during the pendency of the Action I  
become an employee of a competitor of the opposing Party, I will promptly  
inform the counsel for the party who retained me in the Action, and I will not  
thereafter review any Designated Material marked by the opposing Party as  
“ATTORNEYS AND CONSULTANTS ONLY” unless and until the Parties  
agree or the Court orders otherwise. I hereby consent to the jurisdiction of the  
United States District Court for the Central District of California for purposes of  
enforcing this Order.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

\_\_\_\_\_

[Printed Name]

[Signature]