



## Non-Disclosure Agreement

This Agreement is made this \_\_\_ day of \_\_\_\_\_, 2019 (Effective Date) by and between **Memry Corporation**, having a principal place of business at 3 Berkshire Blvd., Bethel, CT 06801 (hereinafter referred to as "MEMRY") and \_\_\_\_\_ having a principal place of business at \_\_\_\_\_ (hereinafter referred to as "COMPANY"). Each of MEMRY and COMPANY may be referred to individually as a "Party" and MEMRY and COMPANY may be referred to collectively as the "Parties".

WITNESSETH:

WHEREAS, COMPANY and MEMRY have developed certain Confidential Information (as defined in Section 1 of the Agreement below) that is proprietary to COMPANY or MEMRY and that COMPANY and MEMRY believe has substantial value for future exploitation; and

WHEREAS, MEMRY and COMPANY wish to enter into general discussions to evaluate potential business arrangements related to [please business opportunity must be identified and properly described] (the "Purpose"); and

WHEREAS, in the frame of the above general discussions, COMPANY and MEMRY are willing to disclose the Confidential Information to each other for the limited purpose, and subject to the terms and conditions, set forth in this Agreement;

NOW, THEREFORE, in consideration of the above premises, constituting part of the Agreement, the parties agree as follow:

### 1. Definitions.

**1.1** Under this Agreement, a "Disclosing Party" is a Party to this Agreement who at any time has disclosed its Confidential Information to the other Party to this Agreement; a "Receiving Party" is a Party to this Agreement who at any time has received Confidential Information belonging to the other Party to this Agreement.

**1.2** For purposes of this Agreement, the term "Confidential Information" means samples as defined in Section 3, the results of Sample product evaluation and all information, including without limitation, any business, product or process design or other technical, scientific, financial, commercial, trade secret information, disclosed by one Party to the other Party, either directly or indirectly, and either in writing or orally or electronically transmitted, from the Effective Date until five years after the termination of this agreement.

**1.3** Despite the foregoing, Confidential Information does not include: (1) information already in possession of the Receiving Party and/or its Affiliates at the time of disclosure; (2) information that is now or later becomes part of the public domain with no fault of the Receiving Party; (3) information that came into the Receiving Party's and/or its Affiliates' possession, through channels independent from the Disclosing Party and is free of any obligation of confidence or which the Receiving Party is not aware is

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subject to confidentiality obligations; or independently developed by Representatives (defined in Section 2.3) of the Receiving Party and/or its Affiliates who had not access to the Confidential Information.

**1.4** All Confidential Information, in whichever form and manner disclosed, shall be marked "Confidential" or similarly marked by the Disclosing Party before being delivered to the Receiving Party. Any Confidential Information transmitted orally or by observation of a facility shall, within thirty (30) days of the exchange of such information, be confirmed and described or identified in writing by the Disclosing Party as Confidential Information for this Agreement to apply thereto.

**1.5** Information provided hereunder shall not be denied the protections afforded by this Agreement solely on the basis that it was not marked and/or summarized in writing in accordance herein if the Receiving Party should reasonably have understood the information to be confidential.

**1.6** A disclosure by the Receiving Party of Confidential Information of the Disclosing Party in response to a valid request by a court or governmental body or as otherwise required by law shall not be considered to be a breach of this Agreement or a waiver of confidentiality for other purposes; provided, however, that the Receiving Party shall, to the extent it is legally permitted to do so, provide prompt prior written notice thereof to the Disclosing Party sufficient to allow the Disclosing Party to contest such disclosure, unless such request is from a law enforcement agency, in which case the Receiving Party shall provide such notice to the extent reasonably practicable.

## **2. Use of Confidential Information.**

**2.1** The Confidential Information shall not be used, copied, reproduced, in whole or in part, without the Disclosing Party's prior written consent, for purposes other than the Purpose above stated.

Except as required by law, the Receiving Party shall not disclose any Confidential Information to any third party and shall use the same degree of care as it uses to protect its own confidential information of a similar nature, but no less than reasonable care, to prevent the unauthorized use, dissemination or publication of the Confidential Information.

**2.2** Neither Party hereto shall, without the prior written consent of the other, use, in whole or in part, the Information: 1) to manufacture or enable manufacture by third party of the Disclosing Party's product, products similar thereto or products derived therefrom; 2) to develop, prepare and/or file any application for any patents, trademarks, copyrights, technology or other trade secrets, using in whole or in part, the Information disclosed or delivered by the other Party.

The Receiving Party shall have the right to disclose the Confidential Information to its officers and employees on a "need to know" basis, who shall be informed by the Receiving Party of the proprietary nature of the Confidential Information.

**2.3** The Receiving Party shall have the right to disclose the Confidential Information to its officers, employees, contractors and agents ("Representative") on a "need to know" basis, who shall be informed by the Receiving Party of the proprietary nature of the Confidential Information. If such Representative are contractors and/or agents, prior to receipt they shall sign an agreement that will protect the Disclosing Party's rights hereunder. A party shall be liable for any failure of its Affiliates or Representatives to abide by the provisions of this Agreement as if such failure was the act or omission of such Party.

**2.4** Each party means the entity signing below and does include all Affiliates of said party. As far as MEMRY is concerned, MEMRY specifically is meant to include the ultimate parent company SAES Getters S.p.A.. Affiliates of COMPANY or MEMRY receiving Confidential Information may only use Confidential Information for the Purpose. Each party hereby represents and warrants that its Affiliates

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will fully and duly abide by this Agreement. For the purposes of this Agreement, “Affiliate” of a Party means an entity that, directly or indirectly, controls, is controlled by, or is under common control with, such Party, but only for so long as such control exists, where “control” means ownership of more than 50% of the outstanding voting securities.

### **3. Samples.**

As it may be necessary from time to time for either Party to supply samples of its products or material (hereinafter “**Samples**”) to the other Party to enable the latter to perform the necessary performance tests and evaluation, during the Term of this Agreement, the Receiving Party undertakes to maintain all Disclosing Party’s Samples as strictly confidential and, furthermore:

- (a) not to analyze, reverse engineer, or let third parties analyze or reverse engineer any Samples or in any way attempt to determine the structure and/or composition of any Samples supplied by the Disclosing Party;
- (b) not to use any Sample supplied by the Disclosing Party for any purpose other than for the Purpose of this Agreement,
- (c) not to transfer the whole or part of any Sample supplied by the Disclosing Party to any third party, unless specifically authorised in writing by the Disclosing Party;
- (d) to return promptly, upon completion of said evaluations, to the Disclosing Party all Samples supplied by the Disclosing Party;
- (e) to make the results of the performance evaluations available to the Disclosing Party.

Samples are provided on an as-is basis and the Disclosing Party expressly disclaims any warranties, explicit or implicit, with respect to the Confidential Information and Samples provided. In particular the Disclosing Party provides no warranties as to intellectual property.

### **4. Ownership and Return of Confidential Information.**

**4.1** The Receiving Party acknowledges that it has no ownership or proprietary rights in the Confidential Information disclosed by the Disclosing Party.

**4.2** Upon Disclosing Party’s request, the Receiving Party shall immediately return to the Disclosing Party all Confidential Information provided to it, and shall retain no materials relating thereto, including copies of, notes on, or abstracts of, any Confidential Information.

Notwithstanding the foregoing, either Party may retain one copy only of the other’s Confidential Information (“Archival Copy”) solely for the limited purpose of its record-keeping, enforcing its rights under this Agreement before a court of competent jurisdiction or pursuant to the requirements of a governmental agency or by operation of law.

### **5. Nondisclosure periods.**

This Agreement shall commence on the Effective Date and shall expire after a period of three (3) years (“Term”). Either Party may terminate this Agreement upon prior written notice at any time with or without cause. The confidentiality obligations contained in this Agreement shall survive a period of three (3) years thereafter, except that (a) for any source code, the confidentiality obligations shall continue in perpetuity, (b) for any information described as a trade secret or that the discloser otherwise clearly and conspicuously identifies as a trade secret, the confidentiality obligation shall continue for so long as such Confidential Information qualifies as a trade secret under applicable law, and (c) subject to 5 (a) and 5 (b), for Archival Copies, the confidentiality obligations shall continue beyond such three (3) year survival period for so long as such Archival Copy is retained by the Receiving Party.

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## **6. Further agreements.**

**6.1** Nothing contained in this Agreement shall be deemed, by implication or otherwise, to convey to the Receiving Party any rights in any Confidential Information disclosed to them, nor shall this Agreement be deemed a commitment of any kind by either COMPANY or MEMRY to enter into any further agreements with each other with respect to any Confidential Information. No license or other right is granted by this Agreement or implied by any disclosure made pursuant to the terms of this Agreement.

**6.2** This Agreement does not represent, and in no way implies:

- a) a partnership, joint venture or other commercial relationship between the Parties;
- b) an authorization for either Party to act as the agent or representative of the other;
- c) an agreement or commitment by either Party to purchase, acquire, develop, or use the products or services of the other Party; or
- d) an encouragement to either Party to expend funds or other resources in the development of products or services.

## **7. Miscellaneous and General.**

**7.1** INFORMATION EXCHANGED UNDER THIS AGREEMENT IS PROVIDED ON AN "AS IS" BASIS WITH NO EXPRESS OR IMPLIED WARRANTIES, except that the Disclosing Party warrants that it has the right to disclose. This Agreement contains the entire Agreement between the Parties. No waiver, amendment or modification of any provisions of this Agreement shall be effective unless in writing and signed by the party against whom such waiver, amendment or modification is sought to be enforced. No failure or delay by either party in exercising any right, power or remedy under this Agreement, except as specifically provided in this Agreement, shall operate as a waiver of any such sought right, power or remedy. All notices permitted or required under this Agreement will be in writing and will be delivered by personal delivery, electronic mail, or by certified or registered mail, return receipt requested, and will be deemed given upon personal delivery, five (5) days after deposit in the mail, or upon acknowledgment of receipt of electronic transmission. Notices will be sent to the addresses set forth at the end of this Agreement or such other address as either Party may specify in writing. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. (x) Facsimile, scanned, electronic or digital signatures shall legally bind the parties to the same extent as originals.

**7.2** This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of COMPANY or MEMRY. COMPANY or MEMRY may not assign any of its rights or delegate any of its obligations under this Agreement to any third party without the express written permission of the other, except pursuant to a transfer of all or substantially all of the assigning Party's business and assets, whether by merger, sale of assets, sale of stock or otherwise.

**7.3** In the event any action is brought to enforce this Agreement, the prevailing party shall be entitled to recover its costs of enforcement including, without limitation, reasonable attorneys fees and court costs. The parties acknowledge and agree that the covenants contained in this Agreement will be difficult or impossible to ascertain and that there will be no adequate remedy of law available to COMPANY or MEMRY and that in the event of such breach, COMPANY and MEMRY, in addition to receiving damages for the breach, shall be entitled to enforce any and all of the covenants contained in this Agreement by injunctive or other equitable relief.

**7.4** In addition to the restrictions and limitations imposed by this Agreement, the Receiving Party shall not export, directly or indirectly, any Proprietary Information acquired from the Disclosing Party, or any

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products of the use or application of any such Proprietary Information, the export of which is regulated or limited by the United States Government, without first obtaining any required license, permit or approval for such export. Information is not to be placed in the public domain, exported from the U.S., transferred to a foreign person or foreign entity, or given to any foreign person in the U.S., without the prior, specific written authorization of the Disclosing Party and the U.S. Department of State or the U.S. Department of Commerce as applicable.

7.5 If any provision of this Agreement as applied to either party or to any circumstance shall be adjudged by a court of competent jurisdiction to be void or unenforceable for any reason, the same shall in no way affect the validity or enforceability of any other provision of the Agreement to the maximum extent permissible by law.

7.6 This Agreement shall be governed by the laws of the State of Connecticut.

7.7 During the nondisclosure period applicable for each item of Confidential Information disclosed to the Receiving Party, all provisions of this Agreement shall survive and shall continue to bind the Parties, their Affiliates and Representatives and assigns, regardless of any earlier expiration or termination of this Agreement.

IN WITNESS WHEREOF, the COMPANY and MEMRY have caused this instrument to be executed in duplicate by their respective duly authorized officers as of the date and the year first above written.

**MEMRY CORPORATION**  
3 Berkshire Blvd., Bethel, CT 06801

By: _____ Mike Sanchez _____ Print Name	By: _____ _____ _____ Print Name
Title: <u>V.P. Sales and Marketing</u>	Title: _____
Date: _____	Date: _____

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