



Non-Disclosure Agreement

This Agreement is made this ___ day of _____, 2018 (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

_____ (hereinafter referred to as "COMPANY")

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 [as to] (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 and all information, including without limitation, any business, production processes, quality control/assurance, design information, all technical papers and data, engineering information, drawings, blueprints, descriptions, know-how, patent applications or other technical, scientific, financial, commercial 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 the date of [.....].

Despite the foregoing, Confidential Information does not include: (1) information already in possession of the Receiving Party and/or its subsidiaries 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 subsidiaries' possession, through channels independent from the Disclosing Party or independently developed by employees of the Receiving Party and/or its subsidiaries who had not access to the Confidential Information.

Memry Corporation

Headquarters and Eastern Operations 3 Berkshire
Boulevard
Bethel, CT 06801
Executive Offices 203-739-1100 Fax (203) 798-6363

Western Operations 4065 Campbell Avenue
Menlo Park, CA 94025
650-463-3400 Fax 650-463-3456

Customer Service 866-Go Memry Fax (203) 798-6606

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. 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.

2. Use of Confidential Information. 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.

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.

Each party means the entity signing below and does include all subsidiaries or other 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.. Subsidiaries or affiliates of COMPANY or MEMRY receiving Confidential Information may only use Confidential Information to the same extent COMPANY or MEMRY respectively is allowed to do in accordance with the provisions of this Agreement. Each party hereby represents and warrants that its subsidiaries or affiliates will fully and duly abide by this Agreement.

3. Ownership and Return of Confidential Information. The Receiving Party acknowledges that it has no ownership or proprietary rights in the Confidential Information disclosed by the Disclosing Party.

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.

4. Duration. This Agreement shall commence on the Effective Date and shall expire on []. The confidentiality obligations contained in this Agreement shall survive a period of THREE (3) years thereafter.

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5. Further agreements.

5.1 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.

5.2 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.

6. Miscellaneous and General.

6.1. 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.

6.2. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of COMPANY or MEMRY. Except as described below, 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.

6.3. 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.

6.4. 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 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.

6.5. 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.

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

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.

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MEMRY CORPORATION
3 Berkshire Blvd., Bethel, CT 06801

(Company Name & Address)

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

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