Confidentiality And Non-Disclosure Agreement,

Dated \_\_\_\_\_\_\_\_\_\_, 20\_\_ (“effective date”)

(the "**AGREEMENT**")

**This Agreement is between**

*[FILL IN EXACT SUPPLIER/FULL ENTITY NAME]*

**having a place of business at** *[FULL ADDRESS AND COUNTRY]*

**Incorporated under the laws of** *[COUNTRY OF INCORPORATION]* **under number** *[INCORPORATION NUMBER]*

(hereinafter "**COMPANY**")

**and**

*[EXACT MERIT ENTITY NAME (AND DIVISION, IF NEED BE)]*

**having a place of business at** *[FULL ADDRESS AND COUNTRY]*

**Incorporated under the laws of** *[COUNTRY OF INCORPORATION]* **under number** *[INCORPORATION NUMBER]*

 (hereinafter "**MERIT**")

(MERIT and COMPANY shall jointly be referred to as the "**PARTIES**" and individually referred to as a "**PARTY**")

**RECITAL**

In connection with MERIT’s *[DESCRIBE PRODUCTS IN SUFFICIENT DETAIL, e.g., evaluation/development/certification of Merit xyz component manufacturing system for Merit, abc-def application]* system and related components, MERIT is considering whether to use COMPANY as a source for materials, parts, components, systems, services, and/or information (the “**SUPPLIES**”). MERIT and COMPANY wish to *[DESCRIBE INTENDED ACTIVITY]* evaluate the SUPPLIES and related terms, conditions and other information (the “**PURPOSE**").

**1. CONFIDENTIAL INFORMATION**

In this AGREEMENT and in performing the activities related to the PURPOSE, a PARTY may view, receive documents or hardware containing or otherwise become aware of any information, document, hardware or data relating to SUPPLIES, products, software, services and information relating to a PARTY's business or affairs including that of its AFFILIATES (as defined in section 3) or which is otherwise related to the PURPOSE (the "**CONFIDENTIAL INFORMATION**"), including expressly, but not limited to, vendor sources, tooling, plant layout, manufacturing, machining and assembly processes, procedures and know-how, costs, component testing techniques, statistical process control techniques and quality control processes, which is disclosed whether in writing, orally or by any other means to one Party (the “**RECEIVING PARTY**”) by the other Party (the “**DISCLOSING PARTY**”),.

CONFIDENTIAL INFORMATION includes only information that is: (i) initially disclosed in written or physical form (including information stored in electronic data systems or in storage media) and which is clearly marked "Confidential" or “Proprietary” or with a similar legend, or (ii) initially disclosed in non written or non physical form, identified at the time of disclosure as confidential and subsequently identified in writing by the disclosing party (marked in accordance with subparagraph (i) above) and delivered to the receiving party within thirty (30) days of such disclosure.

For the avoidance of doubt, this shall exclude any part of such disclosed information or data which:

1. is in or comes into the public domain in any way without breach of this AGREEMENT by the RECEIVING PARTY; or
2. the RECEIVING PARTY can show:
	1. was in its possession or known to it by being in its use or being recorded in its files or computers or other recording media prior to receipt from the DISCLOSING PARTY and was not previously acquired by the RECEIVING PARTY from the DISCLOSING PARTY under an obligation of confidence; or
	2. to have been independently developed by or for the RECEIVING PARTY at any time without use of CONFIDENTIAL INFORMATION disclosed to it by the DISCLOSING PARTY; or
	3. the RECEIVING PARTY obtains or has available from a source other than the DISCLOSING PARTY without breach by the RECEIVING PARTY or such source of any obligation of confidentiality or non-use towards the DISCLOSING PARTY; or
	4. is required to be disclosed by law provided that to the extent possible it gives the DISCLOSING PARTY prompt notice of such required disclosure.

**2. HANDLING OF CONFIDENTIAL INFORMATION**

2.1 The RECEIVING PARTY shall:

1. maintain the DISCLOSING PARTY's Confidential Information in confidence and shall exercise in relation thereto no lesser security measures and degree of care than those which the RECEIVING PARTY applies to its own information, whether CONFIDENTIAL INFORMATION or other, which the RECEIVING PARTY warrants as providing adequate protection against unauthorised disclosure or access, copying or use;
2. arrange proper and secure storage for CONFIDENTIAL INFORMATION which is in the form of documents, papers, computer disks, magnetic tapes or any other tangible form;
3. subject to Clause 3.2, ensure that disclosure of such CONFIDENTIAL INFORMATION is restricted to those of its employees or directors having the need to know the same for the PURPOSE and the RECEIVING PARTY shall ensure that any of such employees or directors who have access to CONFIDENTIAL INFORMATION under this AGREEMENT are aware of, understand, and abide by this AGREEMENT. Notwithstanding the foregoing, the RECEIVING PARTY shall at all times be liable for the failure of any director or employee to comply with the terms of this AGREEMENT;
4. subject to Clause 3.2, not disclose the CONFIDENTIAL INFORMATION, in whole or in part, to any third party;
5. use the CONFIDENTIAL INFORMATION only for the PURPOSE;
6. make no commercial use of the CONFIDENTIAL INFORMATION or any part thereof without the prior written consent of the DISCLOSING PARTY; and
7. not make any press releases or other public announcement with regard to the subject matter hereof or the existence of this AGREEMENT without the prior written consent of the DISCLOSING PARTY and agreement on the medium, format and content of such press release.

2.2 Copies or reproductions of CONFIDENTIAL INFORMATION shall not be made except to the extent reasonably necessary for the PURPOSE and all copies made shall be the property of the DISCLOSING PARTY. All CONFIDENTIAL INFORMATION and copies thereof shall be returned to the DISCLOSING PARTY upon completion of the PURPOSE or within thirty days of receipt of a written request from the DISCLOSING PARTY.

**3. LIMITATIONS AND WARRANTY**

3.1 The DISCLOSING PARTY warrants it has the unrestricted right to disclose its CONFIDENTIAL INFORMATION to the RECEIVING PARTY and to authorize the RECEIVING PARTY to use the same for the PURPOSE. CONFIDENTIAL INFORMATION is provided on a “as is” basis and the DISCLOSING PARTY makes no express or implied representation or warranty as to the completeness or accuracy of any CONFIDENTIAL INFORMATION.

3.2 Nothing in this AGREEMENT shall prevent the RECEIVING PARTY from disclosing the DISCLOSING PARTY's CONFIDENTIAL INFORMATION to the RECEIVING PARTY’s AFFILIATES insofar as such disclosure is strictly necessary for the PURPOSE, provided that in each case the RECEIVING PARTY shall ensure that the provisions of Clause 2 shall be respected by and enforced on those parties. For purposes of this Agreement, Affiliates are all entities controlled by, under common control with, or controlling a party hereto, provided that control shall mean direct or indirect control or ownership of more than 50% of the voting stock or equity of such entity or party. Notwithstanding the foregoing, THE RECEIVING PARTY shall at all times be liable for the failure of any AFFILIATE to comply with the terms of this AGREEMENT.

**4. DISCLAIMER**

All rights in the CONFIDENTIAL INFORMATION are reserved by the DISCLOSING PARTY and no rights or obligations other than those expressly cited or provided herein are granted or to be implied from this AGREEMENT. Nothing contained in this AGREEMENT shall be construed as granting or conferring any license under any patent, patent application, copyright, trademark, or other similar proprietary right held by the DISCLOSING PARTY. In particular, no license is hereby granted directly or indirectly under any invention, discovery, patent, copyright or other industrial property right held now or in the future, made, obtained or licensable by either PARTY. Nothing in this AGREEMENT or its operation shall constitute an obligation on either PARTY to enter into the aforesaid business relationship or shall preclude, impair or restrict either PARTY from continuing to engage in its business otherwise than in breach of the terms of this AGREEMENT.

**5. NOTICES**

All notices under this Agreement shall be in writing, sent by facsimile or first-class registered or recorded delivery post to the PARTY being served at its address specified above (or at such other address of which such PARTY shall have given notice in the form mentioned above) and marked for the attention of that PARTY's signatory of this AGREEMENT.

**6. TERMINATION**

This AGREEMENT will terminate at the earlier of a) two (2) years from the EFFECTIVE DATE or b) thirty (30) days following written notice to the other PARTY. Termination will not affect the rights and obligations set forth under Clauses 1, 2 and 3 above with respect to CONFIDENTIAL INFORMATION disclosed before such termination, which will survive termination for a period of three (3) years.

**7. NON-ASSIGNMENT**

This AGREEMENT is personal to the PARTIES and shall not be assigned or otherwise transferred in whole or in part by either PARTY without the prior written consent of the other PARTY.

**8. NO WAIVER**

8.1 Failure by either PARTY to enforce any of its rights under this AGREEMENT shall not be taken as or deemed to be a waiver of such rights.

8.2 No waiver or amendment of any provisions of this AGREEMENT shall be valid or binding against either PARTY unless the waiver or amendment is made in writing and signed by the duly appointed representatives of both PARTIES.

**9. ENTIRE AGREEMENT, GOVERNING LAW AND JURISDICTION**

9.1 This AGREEMENT constitutes the entire agreement and understanding between the PARTIES in respect of CONFIDENTIAL INFORMATION and supersedes all previous agreements, understandings and undertakings in such respect.

9.2 This AGREEMENT, including this clause, cannot be amended except by the written agreement signed on behalf of each PARTY by their authorized signatories.

9.3 The interpretation, construction and effect of this AGREEMENT shall be governed and construed in all respects in accordance with [*COUNTRY WHERE MERIT ENTITY IS LOCATED, i.e. EITHER FRENCH, GERMAN, ENGLISH OR POLISH*] law and the PARTIES hereby submit to the exclusive jurisdiction of the [*FRENCH, GERMAN, ENGLISH OR POLISH*] courts of [*CITY WHERE THE RESPECTIVE MERIT ENTITY IS LOCATED*].

Approved and executed by an authorized representative of each PARTY, as indicated below.

# COMPANY MERIT

**By:**   **By:**

**Name:**   **Name:**

**Title:** **Title:**