



MUTUAL NON-DISCLOSURE AGREEMENT

THIS MUTUAL NON-DISCLOSURE AGREEMENT (this "**Agreement**") is entered into between Midwest Engineered Systems Inc. ("**Disclosing Party**"), and the other party named on the signature page hereto ("**Receiving Party**") as of _____ (the "**Effective Date**"), to protect the confidentiality of certain confidential information of the Disclosing Party to be disclosed under this Agreement solely for use in evaluating or pursuing a business relationship between the parties (the "**Permitted Use**"). The Disclosing Party and the Receiving Party may be referred to herein individually as a "**Party**" and collectively as the "**Parties.**"

1. DEFINITIONS.

- 1.1 "Confidential Information"** means any and all knowledge and technical and non-technical information that is communicated, in writing or orally, or provided as material, samples or otherwise, regardless of its physical form or characteristics, disclosed by one Party to the other, or by/to affiliates to the extent covered by this Agreement, regardless of being marked as Confidential Information or not, including, without limitation, the existence or terms of this Agreement or the potential business relationship between the Parties, and all other information that the Receiving Party knew, or reasonably should have known, was the Confidential Information of the Disclosing Party. Notwithstanding the foregoing, Confidential Information does not include the following: (a) information that is in or becomes part of the public domain without violation of this Agreement by the Receiving Party; (b) information rightfully known to or rightfully in the possession of the Receiving Party on a non-confidential basis prior to the disclosure to the Receiving Party by the Disclosing Party, as evidenced by written records; (c) information developed independently by the Receiving Party without reference to Confidential Information, as established by written evidence; (d) information disclosed to the Receiving Party by a third party under no obligation of confidentiality to the Disclosing Party and who did not obtain such information by a wrongful or tortious act; or (e) is authorized by the Disclosing Party in writing for disclosure or release by the Receiving Party.
- 1.2 "Disclosing Party"** means the Party disclosing Confidential Information (including its directors, officers, employees and agents) under this Agreement
- 1.3 "Receiving Party"** means the Party receiving Confidential Information (including its directors, officers and employees) under this Agreement.
- 1.4 "Affiliate"** means any entity that controls, is controlled by, or is under common control with a Party. Control for these purposes means the legal, beneficial, or equitable ownership, directly or indirectly, of more than 50% of the capital stock (or other ownership interest, if not a corporation) of such entity ordinarily having voting rights.
- 2. PERFORMANCE OF AGREEMENT.** The Parties agree that the Receiving Party shall: (a) not disclose or otherwise reveal, without the Disclosing Party's prior written consent, any portion of Confidential Information or any notes, extracts, summaries or other materials derived in any way from the inspection or evaluation thereof by the Receiving Party, except to a Receiving Party or its Affiliates who has a need to know such information for the Permitted Use who have signed confidentiality agreements containing, or are otherwise bound by, confidentiality obligations at least as restrictive as those contained herein; (b) only permit access to Confidential Information to those of its employees and its Affiliates' employees or authorized representatives having a need to know such information (c) not use the Confidential Information for personal gain or to advance or support its business ventures or the business ventures of third parties, other than for the Permitted Use; (d) to protect the Disclosing Party's Confidential Information as it protects its own Confidential Information of a similar nature, but in any case shall use no less care than reasonable care; (e) not reverse engineer, disassemble or decompile any prototypes, software or other objects which embody the Disclosing Party's Confidential Information; (f) not include the Disclosing Party's Confidential Information in any application for patent or utility model or design protection in any country filed by or on behalf of the Receiving Party; (g) not use Confidential Information to manufacture or have manufactured by itself or third parties, products that are derived from the Disclosing Party's Confidential Information; (h) not export, directly or indirectly, any Confidential Information received from Disclosing Party except as authorized by applicable U.S. export control laws; and (i) upon discovery of an unauthorized disclosure, endeavor to prevent



further disclosure or use and shall notify the Disclosing Party as soon as possible. The Confidential Information provided by the Disclosing Party shall not be copied or reproduced without the Disclosing Party's prior written permission, except for such copies as may reasonably be required for internal evaluation.

3. **NO WARRANTIES.** The Parties understand and agree that neither Party has made or makes any representation or warranty as to the accuracy or completeness of the Confidential Information, and that neither Party shall have any liability resulting from use of the Confidential Information by the other. **THE DISCLOSING PARTY IS PROVIDING CONFIDENTIAL INFORMATION ON AN "AS IS" BASIS FOR USE BY THE RECEIVING PARTY AT ITS OWN RISK. THE DISCLOSING PARTY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE.** Nothing in this Agreement imposes on either party any obligation to provide further Confidential Information or update or correct any inaccuracies in the Confidential Information.
4. **PERMISSIVE DISCLOSURE.** Notwithstanding anything herein to the contrary, if a Party is required to disclose Confidential Information to satisfy a legal demand by a court or governmental body of competent jurisdiction, the Receiving Party may do so after first, to the extent permitted by law, giving the Disclosing Party reasonable notice so the Disclosing Party may seek appropriate relief from the court order, at its sole cost and expense. The Receiving Party shall disclose only that portion of Confidential Information that is legally required to be disclosed and request confidential treatment of the Confidential Information by the court.
5. **NO LICENSE / COMMITMENT / OBLIGATION.** Neither the execution of this Agreement nor the furnishing of any information hereunder shall be construed by the Receiving Party as granting any license or any other rights other than as set forth herein under any trade secrets, copyrights, patents or other intellectual property right now or hereafter owned by, controlled by or licensed to the Disclosing Party. This Agreement shall not be construed by either Party in any manner to be an obligation to enter into a subsequent agreement of any kind, or to result in any claim of obligation to enter into a subsequent agreement of any kind, or to result in any claim whatsoever by one Party against the other Party for reimbursement of costs or payment for any efforts expended hereunder.
6. **GOVERNING LAW.** This Agreement and any action related thereto will be governed, controlled, interpreted, and defined by and under the laws of the State of Wisconsin, without giving effect to any conflicts of laws principles that require the application of the law of a different state. Any disputes under this Agreement may be brought in the state courts and the Federal courts for the county in the State of Wisconsin, and the Parties hereby consent to the personal jurisdiction and exclusive venue of these courts.
7. **REMEDIES.** The Receiving Party hereby agrees that its breach of this Agreement may cause irreparable damage to the Disclosing Party and that the Disclosing Party shall be entitled to seek injunctive and/or other equitable relief to prevent a breach of the provisions of this Agreement, or any part thereof, in addition to any other remedies available to the Disclosing Party. All remedies available to the Disclosing Party hereunder are cumulative, and may, to the extent permitted by law, be exercised concurrently or separately. The exercise by the Disclosing Party of any one remedy shall not be deemed to be an election of such remedy or to preclude the exercise of any other remedy.
8. **TERM.** This Agreement will terminate five (5) year(s) after the Effective Date, or may be terminated by either Party at any time upon thirty (30) days written notice to the other Party; provided, that each Party's obligations under this Agreement will survive termination of this Agreement for a period of five (5) years, or such earlier time as such information is no longer "Confidential Information" hereunder, and will be binding upon such Party's heirs, successors, and assigns. Upon the first to occur of the request of the Disclosing Party or the termination of this Agreement, the Receiving Party shall, within thirty (30) days of such request or termination, return to the Disclosing Party (or its designees) or certify as destroyed all Confidential Information, in whatever form, including written or electronically recorded information (to the extent reasonably practicable) and all copies thereof.
9. **MISCELLANEOUS.** Neither Party shall assign or transfer any of its rights or obligations hereunder without the prior written consent of the other Party, except to a successor in ownership of all or substantially all of the assets of the assigning Party if the successor in ownership expressly assumes in writing the terms and conditions of this



Agreement. This Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the Parties. If any provision hereof shall be prohibited by or unenforceable under any law, such provision shall be ineffective to the extent of such prohibition, unenforceability, without invalidating or nullifying the remainder of such provision or any other provision of this Agreement. This Agreement may be executed electronically and in counterparts, each of which shall, when executed, be deemed to be an original, but all of which together shall constitute one instrument. Each Party represents and warrants that its delivery of this Agreement has been duly authorized by all necessary corporate or other actions. This Agreement constitutes the entire agreement between the Parties and supersedes all prior representations, agreements, understandings and arrangements, oral or written, between the Parties with respect to the subject matter hereof. This Agreement may not be modified except by a written agreement executed by all Parties.

The parties have executed this Mutual Non –Disclosure Agreement as of the Effective Date.

DISCLOSING PARTY:
MIDWEST ENGINEERED SYSTEMS, INC.

Name

Signature

Title

Address: W238N1800 Rockwood Drive
Waukesha, WI 53188

RECEIVING PARTY:

Company Name

Name of recipient

Signature

Title

Address: _____

