

MUTUAL CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT

THIS CONFIDENTIALITY AND NON-DISCLOSURE AGREEMENT (this "Agreement") is made and entered into as of this ___ day of _____, 20__, (the "Effective Date") by and between _____ (the "Company"), and EMS Engineered Materials Solutions, LLC, a Delaware limited liability company ("EMS").

WITNESSETH:

WHEREAS, each of the parties is interested in receiving a disclosure of certain Confidential Information (as defined below) and Trade Secrets (as defined below) from the other party for the sole purpose of evaluating potential business transactions between them (any such transaction referred to as a "Transaction"), pertaining to _____; and

WHEREAS, each of the parties believes that it may benefit by having the other party share certain Confidential Information and/or Trade Secrets, and the parties believe that it is in their mutual interest to ensure that all such Confidential Information and/or Trade Secrets will be safeguarded and carefully protected by the Recipient (defined below) and that certain other protective measures benefiting each of the parties will be complied with.

NOW, THEREFORE, for and in consideration of the premises, the mutual obligations herein and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto, each intending to be legally bound, hereby agree as follows:

1. Definitions.

"Affiliate" of a Person means any Person owning or controlling, owned or controlled by, or under common ownership or control with, such Person.

"Confidential Information" means and includes any information, data or know-how of any sort that the Discloser either (i) discloses to the Recipient in writing; or (ii) discloses to the Recipient orally, *provided that* information disclosed orally is reduced to writing sent to the Recipient at the address specified in Section 11 below within thirty (30) days of the oral disclosure, and *further provided* that any writing embodying Confidential Information shall bear the legend "**CONFIDENTIAL INFORMATION OF DISCLOSER**" or some similar designation. The term "Confidential Information" does not include:

- (i) information already known to the Recipient; or
- (ii) information which becomes publicly known on the Effective Date or anytime thereafter through no wrongful act of the Recipient; or
- (iii) information received by the Recipient from a third party who was in proper possession of the information and was under no legal obligation not to disclose it; or
- (iv) information independently developed by the Recipient; or
- (v) information furnished to a third party by the Discloser without a restriction on the third party's rights with respect to the information; or

- (vi) information the Discloser agrees in writing may be release from the scope of Confidential Information; or
- (vii) information which is required by operation of law to be disclosed.

“Discloser” means whichever party discloses any Confidential Information and/or Trade Secrets to the other party.

“Effective Date” has the meaning ascribed to it in the first sentence of this Agreement.

“Person” means any person, organization, corporation, partnership, limited liability company, association or other entity.

“Recipient” means whichever party receives a disclosure of any Confidential Information and/or Trade Secrets from the other party.

“Trade Secrets” means any “trade secret” as defined by statute or common law (as applicable) under the state laws of the governing jurisdiction of this Agreement.

2. Covenant not to Disclose.

(i) Each party, when acting as the Recipient, hereby acknowledges that it will be exposed to Confidential Information and/or Trade Secrets of the Discloser. The Recipient hereby agrees that it shall not use, commercialize or disclose any Confidential Information and/or Trade Secrets, or the identity of the Discloser or its Affiliates in connection with any Transaction, or disclose the fact that discussions or negotiations are taking place concerning a possible Transaction or any of the terms, conditions or other facts with respect thereto, to any Person, except in connection with the Recipient’s evaluation and performance (if applicable) of the Transaction to employees, agents, subcontractors, consultants, and Affiliates of the Recipient having a need to know, and to such other recipients as the Discloser may approve in writing, *provided that* all such other recipients shall have first executed a confidentiality agreement in a form acceptable to the Discloser. The Recipient may use Confidential Information and/or Trade Secrets provided hereunder solely for purposes directly related to the Transaction and for no other purpose. Nothing contained in this Agreement shall be deemed to obligate either party to disclose any Confidential Information and/or Trade Secrets to the other. Each party agrees to refrain from disclosing to the other party any information which is not relevant to the evaluation of the Transaction or to further the Transaction if consummated. The Recipient shall take all reasonable measures to ensure that no unauthorized Person shall have access to the Confidential Information and/or Trade Secrets and that all authorized person having access to them refrain from making any unauthorized use or disclosure in violation of this Agreement. For the purposes of this Agreement, “need to know” means that the employee, agent, subcontractor, consultant, or Affiliate requires the Confidential Information and/or Trade Secrets to perform his responsibilities in connection with the Transaction or the evaluation thereof.

(ii) In the event that the Recipient becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar process) to disclose any of the Confidential Information and/or Trade Secrets, the Recipient shall provide the Discloser with prompt

prior written notice of such requirement so that the Discloser may seek a protective order or take any other appropriate action. In the event that such protective order is not obtained, or the Discloser waives in writing its rights under this Section 2(ii), the Recipient agrees to furnish only that portion of the Confidential Information and/or Trade Secrets which the Recipient is advised by written opinion of its legal counsel is legally required to be disclosed, and to exercise reasonable efforts to obtain the confidential treatment of such Confidential Information and/or Trade Secrets. In such event, the Recipient shall not be liable for such disclosure unless such disclosure was caused by, or resulted from, in whole or in part, a previous disclosure by the Recipient not permitted by this Agreement.

3. Term of Covenant.

The covenant contained in this Agreement shall be effective as of the Effective Date and shall continue in full force and effect for three (3) years thereafter; provided, however, that with respect to Trade Secrets, the Recipient's obligations of non-use, confidentiality and non-disclosure as set forth in this Agreement shall continue to survive after said five (5) year period to the greatest extent permitted by applicable law. These rights of the Discloser are in addition to those rights the Discloser has under common law or applicable statutes for the protection of trade secrets.

4. Return of Materials.

Upon the request by the Discloser, the Recipient will return promptly all Confidential Information and/or Trade Secrets (whether originals, copies, or extracts, stored in any medium) to the Discloser.

5. Disclaimer.

The parties acknowledge that neither party is making any representation or warranty, express or implied, as to the accuracy or completeness of the Confidential Information, and neither party nor any of its officers, directors, employees, Affiliates or agents will have any liability to the Recipient or any other person resulting from the Recipient's use of the Confidential Information.

6. Retention of Ownership.

No patent, copyright, trademark or other proprietary right is licensed, granted or otherwise transferred by this Agreement or any disclosure hereunder, except for the right to use such information solely in accordance with this Agreement. No disclosure of any Confidential Information and/or Trade Secrets shall be construed as a public disclosure of such information or documents by either party for any purpose whatsoever.

7. Severability and Reformation.

Each of the covenants contained in each section of this Agreement constitutes a separate and independent covenant, and each such covenant is expressly agreed to be severable from the other covenants in this Agreement. This Agreement shall be enforced to the fullest extent permissible under the laws or policies of each state and jurisdiction in which such enforcement is sought, but the

unenforceability or invalidity of any provision (or the modification of such provision to conform with laws or public policies) shall not render unenforceable or impair the remainder of this Agreement, which shall be deemed amended to delete or modify, as necessary, the invalid or unenforceable provisions. The parties consent to and affirmatively request that this Agreement be reformed to the extent necessary to allow for its enforcement.

8. Injunctive Relief.

Each of the parties acknowledges that any violation or threatened violation of the restrictions contained in this Agreement would cause irreparable harm to the other party and that damages at law would be inadequate. Each of the parties therefore agrees that in the event of any breach or threatened breach, or a reasonable belief of imminent breach, of this Agreement by any party, the other party shall be entitled to preliminary and permanent injunctive relief, without bond, in addition to any other remedy which it may have at law or in equity.

9. Assignment.

The terms and provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Neither this Agreement nor any rights or obligations hereunder may be transferred or assigned without the other party's prior written consent and any attempt to the contrary shall be null and void.

10. Interpretation.

The headings and captions used in this Agreement are for convenience of reference only, and shall in no way define, limit, expand or otherwise affect the meaning or construction of any provision of this Agreement. All pronouns or any variations thereof contained in this Agreement refer to the masculine, feminine or neuter, singular or plural, as the identity of the person or persons may require.

11. Notices.

All notices required under this Agreement shall be made in writing and shall be deemed given when (i) delivered in person, (ii) three (3) business days after deposit in the United States mail, postage prepaid, by first class mail or certified mail, (iii) when delivered (and receipt for) by an overnight delivery service, or (iv) when first sent by electronic communication or other means of instantaneous communication provided such communication is promptly confirmed by the recipient via personal delivery, mail or an overnight delivery service as provided above, addressed in each case as follows or at such other address as either party may designate from time to time in writing:

If to EMS:

If to Company:

Paul Duffy
Chief Operating Officer
EMS Engineered Materials
Solutions, LLC
39 Perry Avenue
Attleboro, MA 02703-0964

[Name]

[Address]

12. Attorney's Fees.

If any party to this Agreement breaches any of the terms of this Agreement, then that party shall pay to the non-defaulting party all of the non-defaulting party's costs and expenses, including reasonable attorney's fees, incurred by that party in enforcing the terms of this Agreement.

13. Entire Agreement.

This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior agreements, understandings or negotiations between the parties, whether oral or written.

14. Waiver and Amendment.

Except as provided in Section 7 hereof, no provision of this Agreement may be waived, amended, modified, extended or discharged except by an agreement in writing signed by the party against whom enforcement is sought. A waiver by any party of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by the other party.

15. Export Control.

The parties agree that they will not knowingly export or reexport, directly or indirectly, any product or technical data (as defined by the U.S. Export Administration Regulations) including software, or any controlled product (including software) restricted by other applicable national regulations, disclosed under this Agreement, or any direct product of such technical data, to any destination to which such export or reexport is restricted or prohibited by U.S. or other applicable law, without obtaining prior authorization from the U.S. Department of Commerce and other competent government authorities to the extent required by those laws. This provision shall survive termination or expiration of this Agreement.

16. Governing Law.

THIS AGREEMENT SHALL BE CONSTRUED, GOVERNED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE COMMONWEALTH OF MASSACHUSETTS WITHOUT REGARD TO ITS CONFLICT OF LAWS PRINCIPLES.

17. Counterparts.

This Agreement may be executed in two or more counterparts (any of which may be via facsimile signature), each of which shall be deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

ENGINEERED MATERIALS SOLUTIONS, _____
LLC

By: _____

By: _____

Name: Paul Duffy

Name: _____

Title: Chief Operating Officer

Title: _____

Date: _____

Date: _____