



MUTUAL NON-DISCLOSURE AGREEMENT

This **MUTUAL NON-DISCLOSURE AGREEMENT** (this “**Agreement**”), dated Insert Effective Date (the “**Effective Date**”), is made by and between **ENERGY SYSTEMS GROUP, LLC**, an Indiana limited liability company with principal offices at 9877 Eastgate Court, Newburgh, IN 47630 (“**ESG**”) and **INSERT NAME OF COMPANY**, a Insert State of Formation and Type of Legal Entity, with its principal offices at Insert Address for Company (“**Company**”). ESG and Company are each a “**Party**” and collectively the “**Parties**”.

RECITALS

ESG and Company have entered into, or may enter into, discussions and negotiations regarding a possible business opportunity, and may work together to evaluate any potential business transactions (“**Transaction(s)**”). In connection with the potential Transaction(s), ESG and Company may exchange proprietary or Confidential Information, as such term is defined in Section 2, with the quantity, frequency, and content of the confidential disclosures being solely determined by each Party at its sole discretion.

AGREEMENT

1. **DISCLOSER AND RECIPIENT.** For purposes of this Agreement, the “**Discloser**” shall refer to the Party disclosing Confidential Information to the other Party, who will be referred to as the “**Recipient**”.
2. **CONFIDENTIAL INFORMATION**
 - 2.1 For purposes of this Agreement, the term “**Confidential Information**” means any information, whether oral, in writing, or other tangible form, including but not limited to, this Agreement, trade secrets, know-how, formulas, processes, data, communications, market research, product development, proposed products and services, business plans, technical information, proprietary information, customer lists, prices, terms and conditions, and any non-public information which concerns the business and operations of a Party or non-public information concerning the business and operations of a third party that a Party is under a duty to protect from uncontrolled disclosure, except for that information specified in Section 5 of this Agreement, and that: (a) Discloser owns or has a right to disclose, (b) is related to the Transaction(s), and (c) is disclosed by Discloser to the Recipient pursuant to this Agreement in the following manner:
 - (A) marked by the Discloser as confidential before its disclosure to the Recipient if it is disclosed in written, graphic or any other tangible form that can be marked as confidential;
 - (B) if disclosed verbally, visually or in any other intangible form or in any tangible form that cannot be marked as confidential, identified as confidential at the time of disclosure, and thereafter confirmed in writing, marked confidential in a written notice given by the Discloser to the Recipient within fifteen (15) calendar days after its initial disclosure to the Recipient; or
 - (C) reasonably determined to be information that the Recipient would consider confidential if it was the Recipient’s own information.

In the case of information disclosed by either Party, Confidential Information includes information about or owned by their respective customer(s).

3. **AFFILIATES.** For purposes of this Agreement, the term “**Affiliates**” shall mean any company or entity in which a party or its parent company or companies now or later owns or controls, directly or indirectly, 50% or more of the voting stock or otherwise controls or is under common control with such company or entity. “**Control**” as used in this Agreement shall mean the power or authority, through ownership or voting securities, by contract or otherwise, to direct the management and policies of the company or entity.

4. **CONFIDENTIALITY OBLIGATIONS**

- 4.1 The Recipient shall receive and maintain in confidence all of the Confidential Information made available to it, directly or indirectly, by the Discloser. The Recipient shall exercise reasonable efforts to avoid the disclosure of the Confidential Information to any third party including to any patenting entity, provided that the Recipient may disclose Confidential Information to its directors, officers, employees, contractors, consultants, agents and advisors, its Affiliates, contractors, agents and advisors (collectively “**Representatives**”), who are bound by the terms and conditions of this Agreement or terms and conditions at least as stringent as those contained in this Agreement. Each Party agrees that its disclosure of Confidential Information to Representatives shall be limited to only so much of such Confidential Information is necessary for the Representatives to perform their respective functions.
- 4.2 The Recipient agrees to treat the Discloser’s Confidential Information in the same manner as it treats its own.
- 4.3 The Recipient shall, upon written request by the Discloser, return or destroy all Confidential Information furnished in writing to the Recipient, directly or indirectly, by the Discloser, except that the Recipient may retain one copy in its confidential files for archival and evidentiary purposes, and copies of any Confidential Information (including any electronic file back-up and other back-up media) that Recipient is required to record or maintain in its files by applicable statute, law or government rule or regulation, or by any judicial governmental supervisory or regulatory body or pursuant to its compliance and record-retention policies and procedures.

5. **EXCEPTIONS TO CONFIDENTIALITY**

- 5.1 The obligations of Section 4 above shall not apply to any portion of the Confidential Information if any of the following are demonstrated:
- (A) Confidential Information was in the Recipient’s or its Affiliates’ possession prior to first receipt of same, directly or indirectly, from the Discloser, provided that the source of such information, insofar as is known by the Recipient, was not prohibited from disclosing such information to the Recipient by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Discloser.
 - (B) At the time of disclosure, Confidential Information is or becomes published information known on a non-confidential basis through no breach of this Agreement by the Recipient or its Affiliates.
 - (C) Confidential Information corresponds in substance to information furnished to the Recipient or its Affiliates by others provided that the source of such information, insofar as is known by the Recipient, is not prohibited from disclosing such information to the Recipient by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the Discloser.

- (D) Confidential Information is independently developed by the Recipient or its Affiliates without the use of the Confidential Information.
- 5.2 The occurrence of any of the above exceptions shall not be construed to grant any rights, express or implied, under any patent licensable by the Discloser.
- 5.3 Confidential Information shall not be deemed to be within any of the above exceptions merely because it is embraced by more general information available on a non-confidential basis or in the Recipient's possession. In addition, any combination of features shall not be deemed within any of the above exceptions unless the combination itself and its principles of operation are embraced by corresponding information, which is within one of the above exceptions.
6. **COMPELLED DISCLOSURE.** In the event the Recipient is legally compelled to disclose the received Confidential Information, such as in response to a valid order by a court or governmental body or required pursuant to applicable law or regulation, the Recipient may disclose the received Confidential Information, provided adequate prior written notice of such compelled disclosure is given to the Discloser to permit it to contest such disclosure and that the recipient agrees to cooperate, to the extent permitted by law, in any reasonable protective efforts at the sole expense of Discloser.
7. **REPRESENTATIONS AND WARRANTIES**
- 7.1 Discloser represents and warrants to Recipient that it has the right and authority to disclose the Confidential Information to Recipient under this Agreement.
- 7.2 The Confidential Information is being disclosed on an "as is, where is" basis, and Discloser makes no representations or warranties, express or implied, regarding the quality, quantity, value, condition, completeness or accuracy of the Confidential Information. Each Party agrees that neither Party shall have any liability to the other Party relating to or resulting from the use of or reliance upon, or errors or omissions in, the Confidential Information provided under this Agreement. Only those representations or warranties which are made in a final definitive agreement regarding any business transaction, when, as and if executed, and subject to such limitations and restrictions as may be specified therein, will have any legal effect and will supersede the provisions of this Section 7.
- 7.3 In no event shall either Party be liable for any lost or prospective profits or any other special, punitive, exemplary, consequential, incidental or indirect losses or damages (in tort, contract or otherwise) under or in respect to this Agreement in any manner.
- 7.4 If the Transaction involves services or potential services at a federal project site and Company will be processing, storing, or transmitting controlled unclassified information ("CU") or Federal contract information ("FCI"), Company represents and warrants that it is and will remain fully compliant with all applicable rules, laws, and regulations, including Federal Acquisition Regulation 52.204-21 and Defense Federal Acquisition Regulation Supplement 252.204-7012, 252.204-7019, and 252.204-7020.

8. **NO GRANT OF RIGHTS.** This Agreement does not and shall not be construed to grant any rights, expressed or implied, to the Recipient in any intellectual property or Confidential Information disclosed by the Discloser.

9. **DEFINITIVE AGREEMENT.** Nothing in this Agreement or activities undertaken pursuant to this Agreement shall be construed to create an obligation on the part of either Party to enter into a final definitive agreement regarding any business transaction and the decision of a Party to enter into such a final definitive agreement shall be within the sole discretion of such Party. Nothing in this Agreement or activities undertaken pursuant to this Agreement shall be construed to create a remedy of either Party against the other for failure to enter into a final definitive agreement regarding any transaction.

For purposes of this paragraph, the term “definitive agreement” does not include an executed letter of intent or any other preliminary written agreement. Both Parties further acknowledge and agree that each Party reserves the right, in its sole discretion, to provide Confidential Information to the other Party under this Agreement, to reject any and all proposals made by the other Party or any of its representatives with regard to any transaction and to terminate discussions and negotiations at any time.

10. **TERM AND TERMINATION.** This Agreement shall continue in force for a period of 2 years (“**Term**”) from the Effective Date. Recipient further agrees to protect Confidential Information for 4 years after the Effective Date. Either Party may terminate this Agreement upon 30 days’ prior written notice to the other Party, however no termination shall affect Company’s obligations with respect to Disclosure and use of Confidential Information disclosed prior to termination.

11. **NOTICES.** All notices required or permitted in connection with this Agreement shall be in writing, addressed and transmitted to the addresses set forth below. Either Party may change its address for notices by providing written notice to the other Party referencing this Agreement.

To Company

Enter Address

Enter City, State, Zip

Attn: Enter Contact Name

Phone Number: Enter Phone Number

Email: Enter Email Address

To Energy Systems Group, LLC:

9877 Eastgate Court

Newburgh, IN 47630

Attn: General Counsel

Phone Number (812) 492-3722

Email: generalcounsel@esg.email

- 12. EXPORT CONTROL AND PROHIBITED PARTIES.** The Parties understand and acknowledge that Confidential Information exchanged under this Agreement may be subject to compliance with any and all applicable United States laws, regulations, or orders, including those that may relate to the export of technical data. The Parties agree to comply with all such applicable laws, regulations, and orders, including, if applicable, all requirements of the international traffic in arms regulations and/or the export administration act, as may be amended. Each Party further agrees to comply with any applicable export license requirements that govern the export, re-export, transfer, or release of Confidential Information. Discloser agrees to provide an export classification number (ECCN) or USML classification number to the recipient in writing for all Confidential Information that is classified with an ECCN other than EAR99 or is classified on the USML. The ECCN and USML classification, if required, shall be provided at the time the Confidential Information is provided to the Recipient. If the Discloser provides Confidential Information subject to the terms of an export license or other export authorization, the Discloser shall notify the Recipient in writing of any restrictions on the use, transfer, distribution, or re-export of the Confidential Information contained in said export license or authorization. The Parties and their Affiliates shall not be obligated to perform any obligations if and to the extent that such performance is prohibited by or contrary to any applicable export controls or trade sanctions.
- 13. CONFLICT OF INTEREST.** Conflicts of interest relating to this Agreement are strictly prohibited. Except as otherwise expressly provided in this Agreement, neither Company nor any director, employee, or agent of Company or its subcontractors or vendors shall give to or receive from any director, employee, or agent of esg any gift, entertainment, or other favor of significant value, or any commission, fee, or rebate. Likewise, neither Company nor any director, employee, or agent of Company or its subcontractors or vendors shall, without prior written notification thereof to ESG, enter into any business relationship with any director, employee, or agent of ESG or any Affiliate, unless such person is acting for and on behalf of esg. "person" means an individual, corporation, company, state, statutory corporation, government entity or any other legal entity. Company shall promptly notify ESG of any violation of this section and any consideration received as a result of such violation shall be paid over or credited to ESG. Additionally, in the event of any violation of this section, including any violation occurring prior to the effective date, resulting directly or indirectly in ESG's consent to enter into this Agreement, ESG may, at ESG's sole option, terminate this Agreement at any time. Any representatives authorized by ESG may audit any and all pertinent records of Company and its subcontractors and vendors for the sole purpose of determining whether there has been compliance with this section.
- 14. TRANSFER.** The Parties shall not voluntarily or involuntarily assign, encumber or otherwise transfer interest in this Agreement in all or in part without the other Party's prior written approval. However, either Party may transfer interest in this Agreement to any of its Affiliates or to a person, firm, or corporation acquiring all or substantially all of the business and assets of said Party.
- 15. ENFORCEMENT.** Each Party agrees that a remedy at law for any actual or threatened breach of this Agreement by the other may be inadequate, and that each Party shall be entitled to seek specific performance, injunctive relief or both, by temporary remedy, writ, or orders as may be entered by a court of competent jurisdiction in addition to any damages that the harmed Party may be legally entitled to recover, together with reasonable expenses of litigation, including attorney's fees incurred as may be approved by such court, and each Party waives any requirement for the securing or posting of any bond in connection with obtaining any such injunctive or equitable relief.
- 16. GENERAL**
- 16.1 This Agreement contains the entire agreement between the Parties concerning Confidential Information and all prior and contemporaneous agreements are void or merged into this

Agreement. This Agreement may not be modified or amended, except in writing and signed by authorized representatives of both Parties.

- 16.2 This Agreement may be executed in two or more counterparts, each of which shall be deemed a duplicate original. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a “.pdf” format data file, such signature shall create a valid and binding obligation of the Party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or “.pdf” signature page were an original.
- 16.3 THIS AGREEMENT SHALL BE GOVERNED BY THE LAW OF THE STATE OF INDIANA, WITHOUT THE APPLICATION OF ITS CHOICE OF LAW RULES, EXCLUDING ANY CONFLICTS OF LAWS PRINCIPLES THAT WOULD REQUIRE APPLICATION OF THE LAW OF ANOTHER JURISDICTION. THE PARTIES CONSENT TO PERSONAL JURISDICTION AND VENUE OF THE STATE COURTS IN WARRICK COUNTY, INDIANA AND THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA THAT IS LOCATED IN EVANSVILLE, INDIANA.
- 16.4 The Parties agree that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement.
- 17.5 It is agreed that the persons signing this Agreement have the authority to enter into such an agreement.

The Parties have executed this Agreement as evidenced by the following signatures of authorized representatives of the Parties:

ENERGY SYSTEMS GROUP, LLC

INSERT COMPANY NAME

Signature:

Signature:

Name: Insert Authorized Company Party Name

Name: Insert Authorized Company Party Name

Title: Insert Authorized Company Party Title

Title: Insert Authorized Company Party Title