



## MUTUAL NON-COMPETE, NON-SOLICITATION AND NON-DISCLOSURE AGREEMENT

This Agreement is made and entered into this day of \_\_\_\_\_ between **JOHNSTOWN WELDING AND FABRICATION, INC.** (hereinafter "JWFI"), a Pennsylvania corporation with its corporate office at 84 Iron Street, Johnstown, Pennsylvania 15906 AND \_\_\_\_\_ (hereinafter "PARTNER") a \_\_\_\_\_ (state) corporation with an address of \_\_\_\_\_ (Company Address) (herein collectively also referred to as "Party" or "Parties").

**WHEREAS**, JWFI and PARTNER have an ongoing business relationship where the Parties will provide certain Confidential Information as described herein to each other for the production of subcontract components for JWFI;

**WHEREAS**, as part of the relationship between JWFI and PARTNER, each Party may disclose certain Confidential Information to the other and may introduce the other to their customers and subcontractors.

**NOW THEREFORE**, in consideration of the mutual promises and covenants contained herein, JWFI and PARTNER hereby agree as follows:

1. RECITALS. The foregoing Recitals are incorporated as if fully set forth herein.
2. COVENANT NOT TO COMPETE AND COVENANT NOT TO SOLICIT CLIENTS/EMPLOYEES.

(a) PARTNER agrees that it and its Affiliates shall not and PARTNER will cause its Affiliates not to, for twenty-four (24) months after the expiration or termination of any services, contracts or subcontracts between JWFI and PARTNER, directly or indirectly, through one or more persons, intermediaries or entities, or in any other capacity (whether alone, through an agency or as a partner, member, manager, nominee, joint-venturer, employer, employee, shareholder, agent, advisor, officer, director or consultant) contact, contract with or otherwise compete with any of JWFI's customers or subcontractors regarding products or services JWFI provides, either directly or indirectly through parties to whom PARTNER is introduced to through its business relationship with JWFI without JWFI's prior written consent.

(b) JWFI agrees that it and its Affiliates shall not and JWFI will cause its Affiliates not to, for twenty-four (24) months after the expiration or termination of any services, contracts or subcontracts between PARTNER and JWFI, directly or indirectly, through one or more persons, intermediaries or entities, or in any other capacity (whether alone, through an agency or as a partner, member, manager, nominee, joint-venturer, employer, employee, shareholder, agent, advisor, officer, director or consultant) contact, contract with or otherwise compete with any of PARTNER's customers or subcontractors regarding products or services PARTNER provides, either directly or indirectly through parties to whom JWFI is introduced to through its business relationship with PARTNER without PARTNER's prior written consent.

(c) An "Affiliate", when used in this Agreement relative to PARTNER, shall mean (i) any Person (as hereinafter defined) that directly or indirectly through one or more intermediaries' controls, is controlled by or under common control with PARTNER and/or (ii) any officer, director, joint-venturer, partner, shareholder, managing member, member, parent or subsidiary of PARTNER or any immediate family member (spouse, parent or child) of the foregoing and/or any Individual. For purposes of this definition, "control" of a person means the power, direct or indirect, to direct or cause the direction of management and policies, whether through ownership of voting securities, by contract or otherwise. "Person" means any natural person, corporation, Limited Liability Company, general partnership, limited partnership, limited liability partnership, proprietorship, joint venture, trust, association, union or other entity or business organization.

(d) An "Affiliate", when used in this Agreement relative to JWFI, shall mean (i) any Person (as hereinafter defined) that directly or indirectly through one or more intermediaries' controls, is controlled by or under common control with JWFI and/or (ii) any officer, director, joint-venturer, partner, shareholder, managing member, member, parent or subsidiary of JWFI or any immediate family member (spouse, parent or child) of the foregoing and/or any Individual. For purposes of this definition, "control" of a person means the power, direct or indirect, to direct or cause the direction of management and policies, whether through ownership of voting securities, by contract or otherwise. "Person" means any natural person, corporation, Limited Liability Company, general partnership, limited partnership, limited liability partnership, proprietorship, joint venture, trust, association, union or other entity or business organization.

(e) PARTNER shall not solicit business from any of the customers or subcontractors that JWFI introduces PARTNER to without the prior written consent of JWFI.

(f) JWFI shall not solicit business from any of the customers or subcontractors that PARTNER introduces JWFI to without the prior written consent of PARTNER.

(g) Notwithstanding the agreement of the Parties to refrain from competing, including solicitation of either Party's customers, if either JWFI or the PARTNER has previously done business with a customer, they will hereafter not be prevented from providing quotes and doing future work for that customer.

(h) PARTNER, JWFI and/or their Affiliates shall not hire, solicit, induce, recruit, attempt to hire or encourage any employees of each other to leave their employment, either directly or indirectly, for themselves or for any other Person.

(i) PARTNER, JWFI and/or their Affiliates shall not hire, solicit, induce, recruit, attempt to hire or encourage any employees of each other to leave their employment, either directly or indirectly, for themselves or for any other Person.

(j) PARTNER shall also not disclose to any person, firm or corporation any trade, technical or technological secrets, details of organization or business affairs, names of past or present customers, or any other information relating to its business with JWFI or its subsidiaries, affiliated, or related entities.

(k) JWFI shall also not disclose to any person, firm or corporation any trade, technical or technological secrets, details of organization or business affairs, names of past or present customers, or any other information relating to its business with PARTNER or its subsidiaries, affiliated, or related entities.

### 3. CONFIDENTIALITY.

(a) The Confidential Information includes non-public, confidential or proprietary information



including, but not limited to, JWFI's designs, patents, trade secrets, customer lists, manufacturing processes, prospects, financial condition, operations, assets, liabilities, and all analyses, compilations, data, studies, notes, interpretation, memoranda and other documents prepared by JWFI or any of its representatives, whether based in whole or in part on any such information, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential." PARTNER shall not use the Confidential Information for any purpose other than performing its obligations under its Agreement(s) with JWFI, and shall not use the Confidential Information in any manner to JWFI's detriment, including without limitation, to reverse engineer, disassemble, or decompile JWFI's Confidential services, products and/or confidential intellectual property.

(b) The Confidential Information also includes non-public, confidential or proprietary information including, but not limited to, PARTNER's designs, patents, trade secrets, customer lists, manufacturing processes, prospects, financial condition, operations, assets, liabilities, and all analyses, compilations, data, studies, notes, interpretation, memoranda and other documents prepared by PARTNER or any of its representatives, whether based in whole or in part on any such information, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential." JWFI shall not use the Confidential Information for any purpose other than performing its obligations under its Agreement(s) with PARTNER, and shall not use the Confidential Information in any manner to PARTNER's detriment, including without limitation, to reverse engineer, disassemble, or decompile PARTNER's Confidential services, products and/or confidential intellectual property.

(c) Disclosure. Either Party shall not disclose any Confidential Information to any third party, whether or not marked or otherwise identified as "confidential." PARTNER and JWFI shall take all additional commercially reasonable precautions necessary to prevent the disclosure of the Confidential Information by its representatives to any unauthorized third party and shall be responsible for any breach of this provision by PARTNER, JWFI or its representatives. Either Party shall notify the other Party in writing of any unauthorized disclosure of Confidential Information by it or its representatives of which said Party has knowledge. Each Party will use all legal measures available to retrieve said Confidential Information.

(d) Required Disclosure. If a Party is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any Confidential Information, it is agreed that said Party will provide the other Party with prompt written notice of such request so that the other Party may seek at its expense an appropriate protective order and/or waive compliance with this provision. If, in the absence of a protective order, a Party is nonetheless compelled to disclose Confidential Information, a Party may disclose without liability hereunder only that portion of such information that they believe reasonably concludes is legally required to be disclosed; provided, however, that each Party gives to the other Party written notice of the information to be disclosed as far in advance of its disclosure as is reasonably practicable and, upon request, uses reasonable efforts to obtain assurances that confidential treatment will be accorded to such information.

(e) Return or Destruction of Confidential Information. Upon the expiration or termination of this Agreement, each Party shall promptly return to the other all copies, whether in written, electronic or other form or media, of each Party's Confidential Information, or destroy all such copies and certify in writing to the other Party that such Confidential Information has been destroyed. In addition, each Party shall also destroy all copies of any notes created by them and certify in writing to the other that such copies have been destroyed. However, each Party or its Representatives are not required to return or destroy Confidential Information that must be retained in compliance with applicable laws, including stock exchange regulations or by governmental order, decree, regulation or rule.

(f) Survival Period. Notwithstanding anything to the contrary herein, each Party's rights and obligations, with respect to Confidential Information under this Agreement shall survive the expiration or termination of this Agreement pursuant to Section 2(a) above, for a period of twenty-four (24) months,



even after the return or destruction of Confidential Information (the "Survival Period"). Provided that for any and all: (a) personal information disclosed hereunder, the Survival Period shall last for the period of time required under applicable federal, state and/or local law; and (b) trade secrets, the Survival Period shall last for as long as such Confidential Information qualifies as a trade secret under applicable federal, state and/or local law.

4. PRESUMPTION. If either Party is in doubt whether information received or discerned is Confidential Information, that Party will presume it to be Confidential Information and treat it as such unless and until specifically instructed otherwise by someone with the appropriate authority from the other Party.

5. NEED TO KNOW. Each Party agrees that any further disclosure of Confidential Information that such Party makes within its own organization will only be made to any officer, director, partner, member, employee, agent or advisor (including, without limitation, consultants, attorneys, accountants, bankers, or financial advisors) of each Party or any of each Party's Affiliates, and potential financing sources (collectively, "Representatives") who have a need for the Confidential Information in order to perform assigned work.

6. INJUNCTIVE RELIEF. The Parties each acknowledges that a violation of any part of this Agreement, including in particular violations of the any provisions as contained in Sections 2, 3, and 4 herein would cause irreparable damage to the other. Accordingly, each Party agrees that the other Party is entitled to injunctive relief from any Court of competent jurisdiction for any actual or threatened violation of this Agreement in addition to any other remedies such Court may deem necessary. In addition to injunctive relief, each Party may pursue actual and consequential damages for violations of this Agreement.

7. SEVERABILITY; INVALIDITY. The invalidity or unenforceability of any one or more of the particular provisions of this Agreement shall not affect the enforceability of the other provisions hereof, all of which are inserted conditionally on their being valid in law, and in the event one or more provisions contained herein shall be invalid, this Agreement shall be construed as if such invalid provision had not been inserted; provided, however, that if such invalidity shall be caused by any value, any price, the length of any period of time, the size of any area, or the scope of activities set forth in any provision hereof, such value, price, period of time, area, or scope shall be considered to be adjusted to a value, price, period of time, area, or scope that would cure such invalidity. The parties hereto agree that the covenants and obligations contained in this Agreement are severable and divisible, that none of such covenants or obligations depends on any other covenant or obligation for its enforceability, that each such covenant and obligation constitutes an enforceable obligation, that each such covenant and obligation shall be construed as an agreement independent of any other provision of this Agreement, and that the existence of any claim or cause of action by one party to this Agreement against another party to this Agreement, whether predicated on this Agreement or otherwise, shall not constitute a defense to the enforcement by any party to this Agreement of any such covenants or obligations. This Agreement shall be construed in a manner which renders its provisions valid and enforceable to the maximum extent (not exceeding its express terms) possible under applicable law. To the extent that any provisions of this Agreement shall be determined to be invalid or unenforceable, the invalid or unenforceable portion of such provision shall be deleted from this Agreement, and the validity and enforceability of the remainder of such provision and of this Agreement shall be unaffected. In furtherance of and not in limitation of the foregoing, it is expressly agreed that should the duration of or geographic extent of, or business activities covered by, the non-competition agreement contained in Section 2 be determined to be in excess of that which is valid or enforceable under applicable law, then such provision shall be construed to cover only that duration, extent or activities which may validly or enforceably covered.

8. NOTICE. Any written notices must be sent to the following addresses:

PARTNER: Company Name & Representative: \_\_\_\_\_

Company Address: \_\_\_\_\_

JWFI: Johnstown Welding & Fabrication, Inc.

Attn: William C. Polacek  
84 Iron Street  
Johnstown, Pennsylvania 15906

Attorney for JWFI:

Leventry, Haschak & Rodkey, LLC  
Attn: Timothy C. Leventry, Esq.  
1397 Eisenhower Boulevard  
Richland Square III, Suite 202  
Johnstown, Pennsylvania 15904

9. WAIVER. No waiver by any Party to this Agreement of any right to enforce any provision of this Agreement, or of any breach hereof, shall be deemed a waiver of such right in the future or of any other right or remedy.

10. CHOICE OF LAW, VENUE & JURISDICTION. This Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. PARTNER hereby expressly consents to the personal jurisdiction of the state and federal courts located in Cambria County, Commonwealth of Pennsylvania for any lawsuit arising from or relating to this Agreement or the subject matter thereof.

11. ENTIRE AGREEMENT. This Agreement constitutes the entire understanding between the parties with respect to the subject matter and cannot be amended, modified or changed except by written consent of both parties.

12. COUNTERPARTS. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the day, month and year first set forth above:

Johnstown Welding & Fabrication Inc.

JWF Representative: \_\_\_\_\_ Date: \_\_\_\_\_

Partner/Company Name: \_\_\_\_\_

Partner Representative: \_\_\_\_\_ Date: \_\_\_\_\_