

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
Washington, D.C. 20549**

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**FORM 8-K  
Current Report  
Pursuant to Section 13 or 15 (d) of  
the Securities Exchange Act of 1934**

**Date of Report (Date of earliest event reported): March 22, 2013**

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**ENVIRONMENTAL SOLUTIONS  
WORLDWIDE, INC.**  
(Exact name of registrant as specified in its charter)

**Florida  
(State or other jurisdiction of  
incorporation)**

**000-30392  
(Commission File Number)**

**13-4172059  
(IRS Employer Identification  
No.)**

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**200 Progress Drive  
Montgomeryville, PA 18936  
(Address of principal executive offices)**

**Registrant's telephone number, including area code: (905) 695-4142 and (215) 699-0730**

**Not applicable.  
(Former name or former address, if changed since last report)**

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (*see* General Instruction A.2. below):

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

### **Item 1.01 Entry into a Material Definitive Agreement**

On March 22, 2013, Environmental Solutions Worldwide, Inc. (the “Company”) entered into a note subscription agreement, a security agreement and issued senior secured five (5) year convertible promissory notes (collectively the “Loan Agreements”) to Black Family Partners LP, John J. Hannan, Orchard Investments, LLC and Richard Ressler (each individually a “Senior Secured Lender” or “Holder” and collectively the “Senior Secured Lenders” or “Holders”) who are current shareholders and may be deemed affiliates of the Company. Pursuant to the Loan Agreements, the Senior Secured Lenders made initial loans to the Company in the principal aggregate amount of \$1.4 million (the “Loan”), subject to the terms and conditions set forth in the Loan Agreements and represented by senior secured convertible promissory notes (the “Notes”), dated March 22, 2013. The Loan Agreements are a part of a senior secured convertible loan facility of up to \$5 million (the “Senior Secured Loan Facility”) wherein the Senior Secured Lenders agreed that at any time prior to March 22, 2014 upon approval of the Company’s board of directors, to have additional closings in which each Holder will be required to purchase additional Notes allocated among the Holders as agreed to in the Loan Agreements (each a “Subsequent Closing” or “Subsequent Closings”). The Loan Agreements and the Senior Secured Loan Facility were approved by the independent directors of the Company.

Proceeds of the Loan will be used by the Company and or its subsidiaries to fund working capital, planned capital investments and other general corporate purposes.

The Notes are secured by a lien on and a security interest in all assets of the following wholly owned subsidiaries of the Company: Technology Fabricators, Inc., ESW America, Inc. and ESW Technologies, Inc., excluding certain collateral subject to pre-existing liens. The Notes bear interest at a rate of 10% per annum compounded quarterly. Interest is payable semi-annually in arrears in cash and at the Company’s election, during the term of the Notes, up to two accrued and unpaid semi-annual interest payments can be payable in the form of the Company’s common stock, \$0.001, par value (the “Common Stock”) valued at the lesser of \$0.04, subject to adjustment (the “Conversion Price”) or the market value of the Company’s Common Stock with interest payments commencing September 30, 2013. At the option of the holders of Notes representing a majority of the then-outstanding principal balance of the Notes, all principal, and interest amounts then outstanding under all of the Notes shall be exchanged for shares of the Company’s Common Stock at the Conversion Price. The Conversion Price is subject to anti-dilution adjustment in the event the Company at any time while the Notes are outstanding issues equity securities including Common Stock or any security convertible or exchangeable for shares of Common Stock for no consideration or for consideration less than \$0.04 a share. The anti-dilution protection excludes shares of Common Stock issuable upon the exercise of options or other securities granted to directors, officers, bona fide consultants and employees of the Company issued pursuant to a board approved option or incentive plan or stock, warrants or other securities issued to a bank or other financial institution in connection.

As a part of the Senior Secured Loan Facility, the Company further agreed to conduct a rights offering to all of its holders of Common Stock, offering all such holders the right to purchase up to their pro-rata Company ownership amount of senior secured five (5) year convertible promissory notes that will be substantially similar to the Notes (the “Rights Offering”). Pursuant to the terms of the Loan Agreements, the Company will not be required to commence the Rights Offering prior to the final Subsequent Closing under the Senior Secured Loan Facility or March 22, 2014, whichever shall first occur.

The foregoing summary of the Notes, the Loan Agreements and the Security Agreement does not purport to be complete and is subject to and qualified in its entirety by reference to the actual text of such documents,

copies of which are attached hereto as Exhibits 4.1, 4.2, and 4.3 respectively, and incorporated herein by reference.

**Item 2.03            Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant.**

Reference is made to the discussion in item 1.01 of this Current Report on Form 8-K, which is incorporated herein by reference.

**Item 3.02            Unregistered Sales of Equity Securities.**

The Notes were issued in reliance upon an exemption from the registration requirements of the Securities Act of 1933, as amended (the “Securities Act”) contained in Section 4(2) thereof. The Notes and the shares of Common Stock issuable upon exchange thereof, have not been registered under the Act, or state securities laws, and may not be offered or sold in the United States without being registered with the Securities and Exchange Commission or in reliance upon an applicable exemption from registration requirements of the Securities Act.

Information called for by this item is contained in Item 1.01 of this Current Report on Form 8-K.

**Item 9.01            Financial Statements and Exhibits.**

<u>Exhibit No</u>	<u>Description</u>
4.1	Form of Note Subscription Agreement entered into on March 22, 2013 by Environmental Solutions Worldwide, Inc. and Senior Secured Lenders.
4.2	Form of Senior Secured Promissory Note issued on March 22, 2013 by Environmental Solutions Worldwide, Inc. in favor of the Senior Secured Lenders.
4.3	Form of Security Agreement

## SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, as amended, the registrant has duly caused this report to be signed on its behalf by the undersigned, hereunto duly authorized.

ENVIRONMENTAL SOLUTIONS WORLDWIDE, INC.  
(Registrant)

Date: March 28, 2013

By: /s/ Praveen Nair  
Praveen Nair  
Chief Financial Officer  
(On behalf of the Registrant and as its principal financial officer)

Exhibit 4.1

**NOTE SUBSCRIPTION AGREEMENT**

*THESE SECURITIES HAVE NOT BEEN REGISTERED WITH THE UNITED STATES SECURITIES AND EXCHANGE COMMISSION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “ACT”), OR THE SECURITIES COMMISSION OF ANY STATE UNDER ANY STATE SECURITIES LAW. THEY ARE BEING OFFERED PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER REGULATION D (“REGULATION D”) PROMULGATED UNDER THE ACT. THE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED UNLESS THE SECURITIES ARE REGISTERED UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS, OR SUCH OFFERS, SALES AND TRANSFERS ARE MADE PURSUANT TO AVAILABLE EXEMPTIONS FROM THE REGISTRATION REQUIREMENTS OF THE ACT AND THOSE LAWS.*

*THIS NOTE SUBSCRIPTION AGREEMENT DOES NOT CONSTITUTE AN OFFER TO SELL, OR A SOLICITATION OF AN OFFER TO BUY, ANY OF THE SECURITIES OFFERED HEREBY BY OR TO ANY PERSON IN ANY JURISDICTION IN WHICH SUCH OFFER OR SOLICITATION WOULD BE UNLAWFUL. INVESTMENT IN THESE SECURITIES INVOLVES A HIGH DEGREE OF RISK. IN MAKING AN INVESTMENT DECISION, INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE COMPANY AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND THE RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED OR DETERMINED THE ACCURACY OR ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.*

This Note Subscription Agreement (this “Agreement”) dated as of March 22, 2013 is executed by the purchasers set forth on the signature pages hereto (each a “Purchaser”, together, the “Purchasers”) in connection with the subscription by the Purchasers for certain senior secured convertible promissory notes (each, a “Note”, and together, the “Notes” (which terms shall be deemed to include any and all senior secured convertible promissory notes issued pursuant to the “rights offering” referred to in Section 6.5 below)) of Environmental Solutions Worldwide, Inc., a Florida corporation (the “Company”), which is offering an aggregate principal amount of Five Million Dollars (\$5,000,000 (U.S.)) of the Notes. The terms of the Notes are set forth in the form of Note attached hereto as Exhibit A.

It is agreed as follows:

**1. *Purchase and Sale of Notes***

(a) Subject to the terms and conditions hereof, the Company has authorized the issuance and sale of the Notes to the Purchasers at the Closings (as defined below).

(b) At the initial closing of the transactions contemplated hereby which will occur simultaneously with the execution of this Agreement (the “Initial Closing”), subject to the terms and conditions of this Agreement, each Purchaser hereby purchases, and the Company hereby issues and sells to each Purchaser the Notes (each an “Initial Note” and collectively the “Initial Notes”) in the aggregate original principal amount of One Million Four Hundred Thousand Dollars (\$1,400,000 (U.S.)), allocated among the Purchasers in the principal amounts set forth under the heading “Initial Note Principal Amount” on Schedule I attached hereto.

(c) At any time prior to March 22, 2014, the Company (with the prior approval of the Company’s board of directors) may elect, upon advance notice of not less than ten (10) business days to the Purchasers, to have one or more additional closings (each a “Subsequent Closing” and collectively, the “Subsequent Closings” and together with the Initial Closings, the “Closings”) at which each Purchaser shall be required (and hereby acknowledges his or its obligation) to purchase additional Notes (each a “Subsequent Note”, and collectively, the “Subsequent Notes” and together with the Initial Notes which are each included within the “Notes” definition) for up to an aggregate principal amount (including all the amounts paid at the Initial Closing and all Subsequent Closings) of Three Million Six Hundred Thousand Dollars (\$3,600,000 (U.S.)) allocated among the Purchasers in the principal amounts set forth under the heading “Total Commitment Amount” on Schedule I attached hereto.

(d) The Company’s agreement with each Purchaser in this Agreement is a separate agreement, and the sale of each Note to each Purchaser is a separate sale. No Purchaser shall have any obligation to purchase any Note not purchased by another Purchaser.

## **2. *Purchasers’ Representations and Covenants; Access to Information Independent Investigation***

Each Purchaser represents and warrants to, and covenants with, the Company, solely on his or its own behalf and on behalf of each person or entity for which such Purchaser is acting as a fiduciary, as follows:

2.1 Exempt Transaction; Investment Intent. (a) The Purchaser is an “accredited investor” as the term is defined in Rule 501(a) under the Act and (b) the

Purchaser is purchasing Notes for his or its own account (or for beneficiaries' accounts over which the Purchaser has investment discretion) and not with a view of reselling the Notes in violation of the Securities Act.

2.2 Independent Investigation. The Purchaser, in purchasing his or its Notes hereunder, has relied upon an independent investigation made by him or it and, to his or its knowledge has, prior to the date hereof, been given access to and the opportunity to examine all books and records of the Company, and all material contracts and documents of the Company; provided, that such investigation shall not affect the Purchaser's ability to rely on the accuracy of the representations and warranties of the Company set forth herein. The Purchaser will keep confidential all non-public information regarding the Company that the Purchaser receives from the Company unless disclosure of such information is compelled by a court or other administrative body or, in the opinion of the Purchaser's counsel, to comply with applicable law. In making the investment decision to purchase Notes, the Purchaser is not relying on any oral or written representations or assurances from the Company or any other person or any representation of the Company or any other person other than as set forth in this Agreement, the public filings of the Company or in a document executed by a duly authorized representative of the Company making reference to this Agreement. The Purchaser has such experience in business and financial matters that it is capable of evaluating the risk of its investment and determining the suitability of its investment. The Purchaser is a sophisticated investor, and an accredited investor as defined in Rule 501 of Regulation D. The Purchaser has obtained and reviewed the copies of the Company's Form 10-K Annual Report for the most recent year ended December 31, 2012, Form 10-Q for the most recent fiscal quarter, and copies of all Form 8-K Reports from the beginning of the past fiscal year to the date hereof and is aware that the Company has continued to sustain losses.

2.3 Economic Risk. The Purchaser understands and acknowledges that an investment in his or its Notes involves a high degree of risk, including a possible total loss of investment. The Purchaser represents that he or it is able to bear the economic risk of the investment. In making this statement, the Purchaser hereby represents and warrants that the Purchaser has adequate means of providing for the Purchaser's current needs and contingencies. The Purchaser further represents that the Purchaser has such knowledge and experience in financial and business matters that the Purchaser is capable of evaluating the merits and risks of the investment in the Notes to be received by the Purchaser. Further, the Purchaser represents that it has no present need for liquidity in his or its Notes.

2.4 No Government Recommendation or Approval. The Purchaser understands that no United States federal or state agency or similar agency of any other country has passed upon or made any recommendation or endorsement of the Company, this transaction or the subscription of the Notes.

2.5 No Registration. The Purchaser understands that the Notes have not been registered under the Act and are being offered and sold pursuant to an exemption from registration contained in the Act based in part upon the representations of the Purchaser contained herein.

2.6 No Public Solicitation. Without conducting any independent investigation, the Purchaser knows of no public solicitation or advertisement of an offer in connection with the proposed issuance and sale of the Notes.

2.7 Authority. The Purchaser, (a) if not a natural person, has the full power and authority, and (b) if a natural person, has the legal capacity, to execute, deliver and perform this Agreement and to perform its obligations hereunder. This Agreement has been duly approved by all necessary action of the Purchaser, as applicable, has been executed by persons duly authorized by the Purchaser, and constitutes a valid and legally binding obligation of the Purchaser, enforceable in accordance with its terms.

2.8 No Reliance on Tax Advice. The Purchaser has reviewed with his, her or its own tax advisors the foreign, federal, state and local tax consequences of this investment, where applicable, and the transactions contemplated by this Agreement. The Purchaser is relying solely on such advisors and not on any statements or representations of the Company or any of its agents and understands that the Purchaser (and not the Company) shall be responsible for the Purchaser own income tax liability that may arise as a result of this investment or the transactions contemplated by this Agreement.

2.9 Independent Legal Advice. The Purchaser and the Company acknowledge that each has had the opportunity to review this Agreement and the transactions contemplated by this Agreement and has consulted with its own legal counsel, and other advisors prior to execution of the within Agreement.

2.10 Acknowledgment. The Purchaser understands that the Notes are being offered and sold to it in reliance of specific exemptions from the registration requirements of Federal and state securities laws and that the Company is relying upon the truth and accuracy of the representations, warranties, agreements,

acknowledgments and understandings of the Purchaser set forth herein in order to determine the applicability of such exemptions and the suitability of the Purchaser to acquire the Notes.

### **3. *Resales***

The Purchasers acknowledge and agree that the Notes may and will only be resold (a) pursuant to a Registration Statement under the Act; or (b) pursuant to an exemption from registration under the Act.

### **4. *Legends***

Each Note shall bear a legend similar to the legend set forth below and any other legend, if such legend or legends are reasonably required to comply with state, Federal or foreign law:

“THIS UNSECURED PROMISSORY NOTE HAS BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933 (AS AMENDED, THE “SECURITIES ACT”) UNDER ANY APPLICABLE STATE SECURITIES LAWS. THIS NOTE MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PELDGED, OR HYPOTHECATED ABSENT AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OR ANY APPLICABLE STATE SECURITIES LAWS OR UNLESS THE PROPOSED TRANSFER MAY BE EFFECTED WITHOUT REGISTRATION OR QUALIFICAITON UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.”

### **5. *Representations, Warranties and Covenants of Company***

The Company represents and warrants to, and covenants with, the Purchasers as follows:

5.1 Organization, Good Standing, and Qualification. The Company is a corporation duly organized, validly existing and in good standing under the laws of the State of Florida and has all requisite corporate power and authority to carry on its business as now conducted and as proposed to be conducted. The Company and its subsidiaries are duly qualified to transact business and are in good standing as foreign corporations or other entities in each jurisdiction in which the nature of the business conducted or property owned by them makes such qualification necessary, except where the failure to so qualify would not, individually or in the aggregate, have a material adverse effect on the business, condition (financial or otherwise), earnings,

properties, prospects or results of operations of the Company or any of its subsidiaries (a "Material Adverse Effect").

5.2 Corporate Condition. None of the Company's filings made with the Securities and Exchange Commission (the "Commission") (such filings, the "SEC Reports"), including, but not limited to, those reports referenced in Section 5.5 below, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading. There have been no material adverse changes in the Company's business, properties, results of operations, condition (financial or otherwise) or prospects since the date of those reports which have not been disclosed to the Purchasers in writing. Further, all material non-public information (other than the specific information respecting the sale of the Notes themselves) respecting the Company, its business and its financial condition, as the same would be required to be disclosed in an SEC Report or registration statement (or corresponding prospectus) if the Notes were otherwise being registered for sale by the Company, has been so publicly reported or disclosed prior to the sale of the Notes as contemplated herein.

5.3 Authorization. The transactions contemplated by this Agreement and the Transaction Documents (as defined below) have been approved by a majority of disinterested directors. The Transaction Documents constitute valid and legally binding obligations of the Company, enforceable in accordance with their respective terms. "Transaction Documents" means, collectively, this Agreement, the Notes, the Security Agreement (the "Security Agreement") dated on or about the date hereof among certain subsidiaries of the Company and Orchard Capital Corp., as the collateral agent for the Purchasers (in substantially the form attached hereto as Exhibit B), and each of the other documents entered into or delivered by the parties hereto, if any, in connection with the transactions contemplated by this Agreement.

5.4 Valid Issuance of the Notes. When executed and delivered in accordance with the terms hereof for the consideration expressed herein, the Notes will have been issued in compliance with all applicable U.S. federal securities laws. Upon issue, each Purchaser will acquire good and marketable title to the Notes, free and clear of all liens, claims and encumbrances. Subject in part to the truth and accuracy of each Purchaser's representations set forth in this Agreement, the offer, sale and issuance of the Notes contemplated by this Agreement are exempt from the registration pursuant to any applicable securities laws, and neither the Company nor any authorized agent acting on its behalf will take any action hereafter that would cause the loss of such exemption.

5.5 Current Public Information. The Company is a “reporting issuer” and it has a class of securities registered under Section 12(g) of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), and has filed all the materials required to be filed as reports pursuant to the Exchange Act for a period of at least twelve (12) months preceding the date hereof (or for such shorter period as the Company was required by law to file such material). All such reports (including, without limitation, the SEC Reports) complied in all material respects with all applicable requirements of Federal securities laws and the rules and regulations promulgated thereunder. The Purchaser has obtained copies of the Company’s Form 10-K Annual Report for the most recent year ended December 31, 2012, Form 10-Q for the most recent fiscal quarter, and copies of all Form 8-K Reports from the beginning of the Company’s past fiscal year to the date of execution of the within Agreement.

5.6 No Directed Selling Efforts in Regard to this Transaction. The Company has not, and, to the best of the Company’s knowledge, neither the Purchasers nor any distributor, if any, participating in the offering of the Notes nor any person acting for the Company or any such distributor has conducted any “directed selling efforts” as that term is defined under the Act. Such activity includes, without limitation, the making of printed material available to investors, the holding of promotional seminars, the placement of advertisements with radio or television stations which discuss the offering of the Notes.

5.7 No Conflicts. The execution and delivery of this Agreement and the consummation of the issuance of the Notes and the transactions contemplated by this Agreement do not and will not conflict with or result in a breach by the Company of any of the terms or provisions of, or constitute a default under, the Certificate of Incorporation or bylaws of the Company, or any indenture, credit agreement, mortgage, deed of trust or other agreement or instrument to which the Company or any of its subsidiaries is a party or by which it or any of its subsidiaries or any of its or any of its subsidiaries’ properties or assets are bound, or any existing applicable decree, judgment or order of any court, Federal or State regulatory body, administrative agency or other governmental body having jurisdiction over the Company or any of its subsidiaries or any of its or any of its subsidiaries’ properties or assets.

5.8 Issuance of Notes. The Company will issue each Note in the name of the applicable Purchaser. Nothing in this section shall affect in any way each Purchaser’s obligations and agreement to comply with all applicable securities laws upon resale of his or its Notes.

5.9 No Action. The Company has not taken and will not take any action that will affect in any way each Purchaser's ability to resell his or its Notes in accordance with applicable securities laws.

5.10 Compliance with Laws. As of the date hereof, the conduct of the business of the Company and its subsidiaries complies (and has complied) in all material respects with all statutes, laws, regulations, ordinances, rules, judgments, orders or decrees applicable thereto. The Company and its subsidiaries have not received notice of any alleged violation of any statute, law, regulations, ordinance, rule, judgment, order or decree from any governmental authority. The Company shall comply with all applicable securities laws with respect to the sale of the Notes, including, but not limited to, the filing of all reports required to be filed in connection therewith with the Commission or any other regulatory authority.

5.11 Litigation. There is no action, suit or proceeding before or by any court or governmental agency or body, domestic or foreign, now pending or, to the knowledge of the Company, threatened, against or affecting the Company and its subsidiaries, or any of the Company or its subsidiaries assets or properties, which could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect. The Company and its subsidiaries are not the subject of any pending or, to their knowledge, threatened investigation or administrative or legal proceeding by the Internal Revenue Service, the taxing authorities of any state or local jurisdiction, or the Commission or any state securities commission which have not been disclosed in the reports referred to in Section 5.5.

5.12 Disclosures. There is no fact known to the Company (other than general economic conditions known to the public generally) that has not been disclosed in writing to the Purchasers that (a) could reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect or (b) could reasonably be expected, individually or in the aggregate, to materially and adversely affect the ability of the Company to perform its obligations pursuant the Transaction Documents.

5.13 Capitalization.

(a) The Company, as of the date of the Initial Closing, will have 250,000,000 shares of Common Stock, par value \$0.001 per share ("Shares") authorized pursuant to its articles of incorporation and 228,213,143 Shares issued and outstanding. All of the issued and outstanding shares of capital stock of the Company and each of its subsidiaries have been duly authorized and are validly issued, fully paid and non-

assessable. No personal liability attaches to the registered holders of the Common Stock by reason of their being registered holders thereof.

(b) Except as set forth on Exhibit C, (i) no subscription, warrant, option, convertible security or other right (contingent or otherwise) to purchase or acquire any shares of capital stock of the Company or any of its subsidiaries that is authorized or outstanding, (ii) neither the Company nor any of its subsidiaries has any obligation (contingent or otherwise) to issue any subscription, warrant, option, convertible security or other such right or to issue or distribute to holders of any shares of its capital stock or other equity securities any evidences of indebtedness or assets of the Company or such subsidiary, (iii) neither the Company nor any of its subsidiaries has any obligation (contingent or otherwise) to purchase, redeem or otherwise acquire any shares of its capital stock (or other equity securities) or any interest therein or to pay any dividend or make any other distribution in respect thereof, and (iv) there are no outstanding or authorized stock appreciation, phantom stock or similar rights with respect to the Company or any of its subsidiaries.

(c) All of the issued and outstanding shares of the Company's and its subsidiaries' capital stock (or other equity securities) have been offered, issued and sold by the Company and such subsidiaries in compliance with applicable Federal and State securities Laws.

5.13. Material Changes. Except as disclosed in the SEC Reports: (a) the Company and its subsidiaries have not incurred any material liabilities or obligations, indirect, or contingent, or entered into any material oral or written agreement or other transaction which is not in the ordinary course of business or which could reasonably be expected to result in a material reduction in the future earnings or prospects of the Company and its subsidiaries; (b) each of the Company and its subsidiaries have not sustained any material loss or interference with its businesses or properties from fire, flood, windstorm, accident or other calamity not covered by insurance; (c) except as described in the SEC Reports, the Company and its subsidiaries have not paid or declared any dividends or other distributions with respect to its capital stock and neither the Company nor any of its subsidiaries is in default in the payment of principal or interest on any outstanding debt obligations; (d) there has not been any change in the capital stock of the Company or any of its subsidiaries, other than shares or options issued pursuant to stock option plans or purchase plans approved by the Company's Board of Directors and repurchases of shares or options pursuant to repurchase plans already approved by the Company's Board of Directors, or indebtedness material to the

Company or any of its subsidiaries (other than the sale of Notes hereunder and in the ordinary course of business); and (e) there has not been any other event or change that would have, individually or in the aggregate, a Material Adverse Effect.

5.14 Financial Statements. The consolidated financial statements of the Company and the related notes contained in the SEC Reports present fairly, in accordance with generally accepted accounting principles, the consolidated financial position of the Company and its subsidiaries as of the dates indicated, and the results of their operations, cash flows and the changes in shareholders' equity for the periods therein specified, subject, in the case of unaudited financial statements for interim periods, to normal year-end audit adjustments. Such consolidated financial statements (including the related notes) have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods therein specified, except that unaudited financial statements may not contain all footnotes required by generally accepted accounting principles. The Company and each of its subsidiaries have fully complied with the Sarbanes-Oxley Act of 2002; however auditor attestation of the Company's compliance is not currently required.

5.15 Stabilization. Neither the Company nor any of its subsidiaries has taken, directly or indirectly, any action which was designed to or which has constituted or which might reasonably be expected to cause or result in stabilization or manipulation of the price of any security of the Company to facilitate the sale or resale of the Notes.

5.16 Brokers. The Company has taken no action which would give rise to any claim by any person for brokerage commissions, finders' fees or similar payments by any Purchaser relating to this Agreement or the transactions contemplated hereby.

5.18 Consents. Except as to filings which may be required under applicable state securities regulations, no consent, authorization, approval, order, license, certificate, or permit of or from, or declaration or filing with, any federal, state, local, or other governmental authority or of any court or other tribunal is required by the Company or any of its subsidiaries in connection with the transactions contemplated hereby. No consent of any party to any contract, agreement, instrument, lease, license, arrangement, or understanding to which the Company or any of its subsidiaries is a party, or by which any of its properties or assets is bound, is required for the execution, delivery, or performance by the Company of the transactions contemplated by the Transaction Documents.

5.19 Intellectual Property. To the Company's knowledge, the Company or its subsidiaries own, or have the right to use, all patents, trademarks, service marks, trade names, copyrights, licenses, trade secrets or other proprietary rights necessary to their business as now conducted without conflicting with or infringing upon the right or claimed right of any person or entity under or with respect to any of the foregoing. Except for hardware and software licenses entered into in the ordinary course of business, the Company and its subsidiaries are not bound by or a party to any options, licenses or agreements of any kind with respect to patents, trademarks, service marks, trade names, copyrights, licenses, trade secrets or other proprietary rights of any other person or entity. The Company and its subsidiaries have not received any communications alleging that the Company or any of its subsidiaries have violated the patents, trademarks, service marks, trade names, copyrights or trade secrets or other proprietary rights of any other person or entity. The Company and its subsidiaries are not aware of any violation by a third party of any of the Company's or its subsidiaries patents, trade marks, service marks, trade names, copyrights, trade secrets or other proprietary rights.

5.20 Foreign Corrupt Practices Act. Neither the Company or any of its subsidiaries nor any director, officer, agent, or other person acting on behalf of the Company or any of its subsidiaries has, in the course of his or its actions for or on behalf of the Company or any of its subsidiaries violated any provision of the United States Foreign Corrupt Practices Act of 1977, as amended, or the regulations there under.

## **6. *Additional Covenants of Company***

6.1 Corporate Existence and Taxes. For as long as any Notes remain outstanding, the Company and its subsidiaries shall, maintain their corporate existence in good standing, and shall pay all taxes when due except for taxes which the Company or its subsidiaries dispute in good faith and for which adequate reserves are established on the Company's or its subsidiaries books and records.

6.2 Use of Proceeds. The Company and/or its subsidiaries shall use all of the net proceeds from the sale of all Notes for the funding of working capital, planned capital investments and other general corporate purposes.

6.3 Publicity. Except as may be required by applicable law or regulation, the Company shall not use, directly or indirectly, the Purchaser's name or the name of any of its affiliates in any advertisement, announcement, press release or other similar communication unless it has received the prior written consent of holders of Notes

representing a majority of the then-outstanding principal balance of the Notes (the “Majority Noteholders”), for the specific use contemplated or as otherwise required by applicable law or regulation.

6.4 Reports. The Company shall timely file all reports (if any) required to be filed with the Commission pursuant to the Exchange Act.

6.5 Rights Offering. The Company hereby commits to conduct a customary “rights offering” to all of its holders of Common Stock, offering all such holders the right to purchase up to their pro-rata Company ownership amount of Company senior secured convertible promissory notes that are substantially similar to the Notes; provided that the Company shall not be required to commence such “rights offering” prior to the last Subsequent Closing (or the date the Company acknowledges that no additional Closing shall occur).

## **7. Closing Conditions**

The obligation of each of the Purchasers to purchase Notes at the Initial Closing is, and the purchase by the Purchasers of any Subsequent Notes will be, subject to the fulfillment, or the waiver by such Purchasers, of each of the following conditions on or before the applicable Closing Date:

7.1 Accuracy of Representations and Warranties. The representations and warranties of the Company contained in this Agreement shall be true and correct in all material respects as of the date of this Agreement and as of each Closing Date as if made on and as of each Closing Date.

7.2 Compliance with Covenants. The Company shall have performed and complied in all material respects with all agreements and covenants contained in the Transaction Documents.

## **8. Collateral Agent**

8.1 Appointment of the Collateral Agent. As further provided in Section 8.4, the Purchasers hereby appoint Orchard Capital Corp. (as the collateral agent under the Transaction Documents) (the “Collateral Agent”) (and the Collateral Agent hereby accepts such appointment) to take any action on their behalf in connection with the Transaction Documents, including, without limitation, the registration of any Collateral (as defined in the Security Agreement) in the name of the Collateral Agent or its

nominees prior to or during the continuance of an Event of Default (as defined in the Notes), the application of any cash collateral received by the Collateral Agent to the payment of the obligations under the Notes, the exercise of any remedies given to the Collateral Agent pursuant to the Transaction Documents and the exercise of any authority pursuant to the appointment of the Collateral Agent as an attorney-in-fact pursuant to the Security Agreement that the Collateral Agent deems necessary or proper for the administration of the Collateral pursuant to the Security Agreements.

## 8.2 Collateral.

(a) For purposes solely of perfection of the security interests granted to the Collateral Agent, as agent on behalf of the Purchasers, and on its own behalf under this Agreement, the Collateral Agent hereby acknowledges that any Collateral held by the Collateral Agent is held for the benefit of the Purchasers in accordance with this Agreement and the Transaction Documents. No reference to the Transaction Documents or any other instrument or document shall be deemed to incorporate any term or provision thereof into this Agreement unless expressly so provided.

(b) The Collateral Agent is to distribute in accordance with the Transaction Documents any proceeds received from the Collateral which are distributable to the Purchasers in proportion to their respective interests in the outstanding obligations under the Notes.

## 8.3 Action by the Majority Noteholders.

(a) Certain Actions. Each of the Purchasers agrees that only the Purchasers representing the Majority Noteholders shall have the right, but not the obligation, to undertake the following actions (it being expressly understood that less than the Majority Noteholders hereby expressly waive the following rights that they may otherwise have under the Transaction Documents) :

(i) Acceleration. If an Event of Default occurs, after the applicable cure period, if any, the Majority Noteholders may, on behalf of all the Purchasers, instruct the Collateral Agent to provide to the Company notice to cure such default and/or declare the unpaid principal amount of the Notes to be due and payable, together with any and all accrued interest thereon and all costs payable pursuant to such Notes;

(ii) Enforcement. Upon the occurrence of any Event of Default after the applicable cure period, if any, the Majority Noteholders may instruct the Collateral Agent to proceed to protect, exercise and enforce, on behalf of all the Purchasers, their rights and remedies under the Transaction Documents against the Company, and such other rights and remedies as are provided by law or equity;

(iii) Waiver of Past Defaults. The Majority Noteholders may instruct the Collateral Agent to waive any Event of Default by written notice to the Company, and the other Purchasers; and

(iv) Amendment. Subject to Section 10, the Majority Noteholders may instruct the Collateral Agent to waive, amend, supplement or modify any term, condition or other provision in the Notes or the Transaction Documents in accordance with the terms of the Notes or Transaction Documents so long as such waiver, amendment, supplement or modification is made with respect to all of the Notes and with the same force and effect with respect to each of the Purchasers.

(b) Further Actions. The Majority Noteholders may instruct the Collateral Agent to take any action that it may take under this Agreement by instructing the Collateral Agent in writing to take such action on behalf of all the Purchasers.

#### 8.4 Power of Attorney.

(a) To effectuate the terms and provisions hereof, the Purchasers hereby appoint the Collateral Agent as their attorney-in-fact (and the Collateral Agent hereby accepts such appointment) for the purpose of carrying out the provisions of this Agreement including, without limitation, taking any action on behalf of, or at the instruction of, the Majority Noteholders at the written direction of the Majority Noteholders and executing any consent authorized pursuant to this Agreement and taking any action and executing any instrument that the Collateral Agent may deem necessary or advisable (and lawful) to accomplish the purposes hereof.

(b) All acts done under the foregoing authorization are hereby ratified and approved and neither the Collateral Agent nor any designee nor agent thereof shall be liable for any acts of commission or omission, for any error of judgment, for any mistake of fact or law except for acts of gross negligence or willful misconduct.

(c) This power of attorney, being coupled with an interest, is irrevocable while this Agreement remains in effect.

8.5 Expenses of the Collateral Agent. The Company shall pay any and all reasonable costs and expenses incurred by the Collateral Agent, all waivers, releases, discharges, satisfactions, modifications and amendments of this Agreement, the administration and holding of the Collateral, insurance expenses, and the enforcement, protection and adjudication of the parties' rights hereunder by the Collateral Agent, including, without limitation, the reasonable disbursements, expenses and fees of the attorneys the Collateral Agent may retain, if any, each of the foregoing in proportion to their holdings of the Notes. The Collateral Agent shall not be entitled to a separate fee for the services rendered pursuant to this Agreement.

8.6 Reliance on Documents and Experts. The Collateral Agent shall be entitled to rely upon any notice, consent, certificate, affidavit, statement, paper, document, writing or communication (which may be by facsimile, electronic mail or telephone) reasonably believed by it to be genuine and to have been signed, sent or made by the proper person or persons, and upon opinions and advice of its own legal counsel, independent public accountants and other experts selected by the Collateral Agent.

8.7 Duties of the Collateral Agent; Standard of Care.

(a) The Collateral Agent's only duties are those expressly set forth in this Agreement, and the Collateral Agent hereby is authorized to perform those duties in accordance with commercially reasonable practices. The Collateral Agent may exercise or otherwise enforce any of its rights, powers, privileges, remedies and interests under this Agreement and applicable law or perform any of its duties under this Agreement by or through its officers, employees, attorneys, or agents.

(b) The Collateral Agent shall act in good faith and with that degree of care that an ordinarily prudent person in a like position would use under similar circumstances.

(c) Any funds held by the Collateral Agent hereunder need not be segregated from other funds except to the extent required by law. The Collateral Agent shall be under no liability for interest on any funds received by it hereunder.

8.8 Resignation. The Collateral Agent may resign and be discharged of its duties hereunder at any time by giving written notice of such resignation to the other parties hereto, stating the date such resignation is to take effect. Within five (5) days of the giving of such notice, a successor collateral agent shall be appointed by the Majority Noteholders; provided, however, that if the Purchasers are unable so to agree upon a

successor within such time period, and notify the Collateral Agent during such period of the identity of the successor collateral agent, the successor collateral agent may be a person or entity designated by the Collateral Agent, and any and all fees of such successor collateral agent shall be the several obligation of the Purchasers. The Collateral Agent shall continue to serve until the effective date of the resignation or until its successor accepts the appointment and receives the Collateral held by the Collateral Agent but shall not be obligated to take any action hereunder.

8.9 Exculpation. The Collateral Agent and its officers, employees, attorneys and agents, shall not incur any liability whatsoever for the holding or delivery of documents or the taking of any other action in accordance with the terms and provisions of this Agreement, for any mistake or error in judgment, for compliance with any applicable law or any attachment, order or other directive of any court or other authority (irrespective of any conflicting term or provision of this Agreement), or for any act or omission of any other person engaged by the Collateral Agent in connection with the Transaction Documents, unless occasioned by the exculpated person's gross negligence or willful misconduct; and each party hereto hereby waives any and all claims and actions whatsoever against the Collateral Agent and its officers, employees, attorneys and agents, arising out of or related directly or indirectly to any or all of the foregoing acts, omissions and circumstances.

8.10 Indemnification. The Purchasers hereby agree to indemnify, reimburse and hold harmless the Collateral Agent and its directors, officers, employees, attorneys and agents, severally, from and against any and all claims, liabilities, losses and expenses that may be imposed upon, incurred by, or asserted against any of them, arising out of or related directly or indirectly to the Transaction Documents or the Collateral, except such as are occasioned by the indemnified person's own gross negligence or willful misconduct.

## **9. *Governing Law***

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, applicable to agreements made in and wholly to be performed in that jurisdiction without regard to the choice of law rules of such state, except for matters arising under the Act or the Exchange Act which matters shall be construed and interpreted in accordance with such laws. Any action brought to enforce, or otherwise arising out of, this Agreement shall be heard and determined in either a Federal or state

court sitting in the County of New York, State of New York, and the parties consent to jurisdiction in the State of New York.

**10. *Entire Agreement; Amendment***

Each Transaction Document delivered pursuant hereto constitute the full and entire understanding and agreement between the parties hereto with regard to the subject matter hereof and thereof, and no party hereto shall be able or bound to any other party hereto in any manner by any warranties, representations or covenants except as specifically set forth herein or therein. Except as expressly provided herein, none of the Transaction Documents may be amended, waived, discharged or terminated other than by a written instrument signed by the party or parties hereto against whom enforcement of any such amendment, waiver, discharge or termination is sought, except that the Majority Noteholders may agree to amend, waive, discharge or terminate this Agreement and the Notes on behalf of all Purchasers (so long as all Purchasers are proportionately treated (based on the relative then-outstanding principal balance of the Notes)).

**11. *Notices, Etc.***

Any notice, demand or request required or permitted to be given by either the Company or any Purchaser pursuant to the terms of this Agreement shall be in writing and shall be deemed given when delivered personally, by facsimile, electronic mail (or similar electronic transmission) with a hard copy to follow by two day courier addressed to the intended recipient thereof at the addresses of the parties hereto in the books and records of the Company or such other address as a party hereto may request by notifying the other in writing.

**12. *Indemnification***

12.1 Company Indemnification. In consideration of the Purchasers' execution and delivery of the Transaction Documents to which it is a party and acquiring the Notes hereunder and thereunder and in addition to all of the Company's other obligations under the Transaction Documents to which it is a party, the Company shall defend, protect, indemnify and hold harmless the Purchasers and all of their affiliates, shareholders, trustees, partners, members, officers, directors, employees and direct or indirect investors and any of the foregoing persons' agents or other representatives (including, without limitation, those retained in connection with the transactions contemplated by this Agreement) (collectively, the "Purchaser Indemnitees") from and

against any and all actions, causes of action, suits, claims, losses, costs, penalties, fees, liabilities and damages (other than consequential damages), and expenses in connection therewith (irrespective of whether any such Purchaser Indemnitee is a party to the action for which indemnification hereunder is sought), and including reasonable attorneys' fees and disbursements (the "Purchaser Indemnified Liabilities"), incurred by any Purchaser Indemnitee as a result of, or arising out of, or relating to (a) any misrepresentation or breach of any representation or warranty made by the Company in the Transaction Documents, (b) any breach of any covenant, agreement or obligation of the Company contained in the Transaction Documents, or (c) any cause of action, suit or claim brought or made against such Purchaser Indemnitee by a third party (including for these purposes a derivative action brought on behalf of the Company) and arising out of or resulting from (i) other than those arising from or resulting from a misrepresentation or breach of any representation or warranty made by such Purchaser Indemnitee contained in the Transaction Documents to which it is a party, the execution, delivery, performance or enforcement of the Transaction Documents, (ii) any transaction financed or to be financed in whole or in part, directly or indirectly, with the proceeds of the issuance of the Notes, or (iii) the status of the Purchasers as investors in the Company.

12.2 Contribution; Mechanics and Procedures. To the extent that the foregoing undertaking by the Company may be unenforceable for any reason, the Company shall make the maximum contribution to the payment and satisfaction of each of the Purchaser Indemnified Liabilities which is permissible under applicable law.

### **13. *Expenses***

Any expenses of each Purchaser reasonably incurred in connection with such Purchaser's prior, present and future investments in or otherwise relating to the Company, including, without limitation, the transactions contemplated under the Transaction Documents and any future financing of the Company, including, without limitation, any and all advisory, legal, filing and other fees incurred in connection therewith, whether incurred prior to or after the date hereof, shall in each case be paid by the Company.

### **14. *No Strict Construction***

The language used in this Agreement will be deemed to be the language chosen by the parties hereto to express their mutual intent, and no rules of strict construction will be applied against any party hereto.

**15. *No Third Party Beneficiaries***

This Agreement is intended for the benefit of the parties hereto and their respective permitted successors and assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other person or entity.

**16. *Survival***

All covenants, agreements, representations and warranties made by the Company and the Purchasers herein and in the Transaction Documents shall survive the execution of this Agreement, the delivery to the Purchasers of the Notes being purchased and the payment therefor.

**17. *Successors and Assigns***

This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and assigns, including any purchasers of the Notes. The Company shall not assign this Agreement or any rights or obligations hereunder without the prior written consent of the Majority Noteholders, including by merger or consolidation, except in accordance with the applicable provisions of the Notes with respect to which the Company is in compliance. Each Purchaser may assign, without the consent of the Company, some or all of its rights hereunder to any person or entity to whom such Purchaser assigns or transfers Notes, or the right to acquire Notes, in accordance herewith; provided, that such transferee agrees in writing to be bound with respect to the transferred Notes to the provisions hereof that apply to the transferring Purchaser, in which event such assignee shall be deemed to be a Purchaser hereunder with respect to such assigned rights.

**18. *Counterparts***

This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party hereto and delivered to the other party hereto; provided, that a facsimile or PDF signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile or PDF signature.

**19. *Headings***

The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

**20. Severability**

If any provision of this Agreement shall be invalid or unenforceable in any jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement in that jurisdiction or the validity or enforceability of any provision of this Agreement in any other jurisdiction.

\* \* \* \*

**IN WITNESS WHEREOF**, the undersigned have duly executed this Agreement as of the date first written above.

**COMPANY:**

**ENVIRONMENTAL SOLUTIONS WORLDWIDE, INC.**

By: \_\_\_\_\_

Name:

Title:

**PURCHASERS:**

**BLACK FAMILY PARTNERS LP**

By: Black Family Partners GP, its general partner

By: \_\_\_\_\_

Leon D. Black

Manager

\_\_\_\_\_  
**JOHN J. HANNAN**

**ORCHARD INVESTMENTS, LLC**

By: Orchard Capital Corp., its manager

By: \_\_\_\_\_

Richard S. Ressler

President

\_\_\_\_\_  
**RICHARD S. RESSLER**

**COLLATERAL AGENT:**

**ORCHARD CAPITAL CORP.**

By: \_\_\_\_\_

Richard S. Ressler

President

**Exhibit A**

**Form of Note**

(see attached)

**Exhibit B**

**Security Agreement**

(see attached)

**Exhibit C**

**Capitalization Terms**

**Schedule I**

Exhibit 4.2

**SENIOR SECURED CONVERTIBLE PROMISSORY NOTE**

*THIS SENIOR SECURED CONVERTIBLE PROMISSORY NOTE HAS BEEN ACQUIRED FOR INVESTMENT PURPOSES ONLY AND HAS NOT BEEN REGISTERED UNDER THE UNITED STATES SECURITIES ACT OF 1933 (AS AMENDED, THE “SECURITIES ACT”) UNDER ANY APPLICABLE STATE SECURITIES LAWS. THIS NOTE MAY NOT BE SOLD, TRANSFERRED, ASSIGNED, PELDGED, OR HYPOTHECATED ABSENT AN EFFECTIVE REGISTRATION UNDER THE SECURITIES ACT OR ANY APPLICABLE STATE SECURITIES LAWS OR UNLESS THE PROPOSED TRANSFER MAY BE EFFECTED WITHOUT REGISTRATION OR QUALIFICATION UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS.*

No. 2013-[\_\_\_\_\_]

U.S.\$[\_\_\_\_\_]

Issuance Date: March 22, 2013

ENVIRONMENTAL SOLUTIONS WORLDWIDE, INC.

SENIOR SECURED CONVERTIBLE PROMISSORY NOTE DUE MARCH 22, 2018

**THIS SENIOR SECURED CONVERTIBLE PROMISSORY NOTE** of Environmental Solutions Worldwide, Inc. (the “Company”), issued this 22<sup>nd</sup> day of March, 2013 (the “Issuance Date”), is duly authorized and issued pursuant to that certain Note Subscription Agreement, dated as of March 22, 2013 between the Company, the Holder (as defined below) and certain other purchasers (the “Note Subscription Agreement”) (including all Senior Secured Convertible Promissory Notes issued in exchange, transfer or replacement hereof, this “Note”), designated as one of the Senior Secured Convertible Promissory Notes Due March 22, 2018, to issued or to be issued pursuant to the Note Subscription Agreement (collectively, the “Notes”).

**FOR VALUE RECEIVED**, the Company promises to pay [\_\_\_\_\_] (or his or its permitted assigns) (the registered holder hereof) (the “Holder”), the principal sum of \$[\_\_\_\_\_], on March 22, 2018 (the “Maturity Date”), subject to Section 1, and to pay in cash all interest that has accrued under the Note on the principal and outstanding interest sum outstanding on a semi-annual basis (i.e., each March 31<sup>st</sup> and September 30<sup>th</sup>, or the next business day) (each such date of payment an “Interest Payment Date”), commencing September 30, 2013), up to and including the date on which this Note has been paid in full, at the rate of 10% per annum, and shall be computed on the basis of a 360-day year and actual days elapsed (depending upon the subscription date). Accrual of interest on this Note shall commence on the Issuance Date and shall continue to accrue (and shall be compounded on a quarterly basis) until the next Interest Payment Date. The interest so payable will be paid on each Interest Payment Date to the person or entity in whose name this Note (or one or more predecessor Notes) is registered on the records of the Company regarding registration and transfers of the Notes (the “Notes Register”) on the first business day immediately prior to such Interest Payment Date. All accrued and unpaid interest shall bear interest at the same rate of 10% per annum until the date of payment. The principal (and all accrued and unpaid interest) of this Note is payable in currency of the United States of America or pursuant to the terms of Section 1 below, or such other

manner of payment, at the sole option of the Holder. The Notes Register shall represent the record of ownership and right to receive principal and interest payments on this Note. Interest and principal shall be payable only to the registered Holder as reflected in the Notes Register. The right to receive principal and interest payments under this Note shall be transferable only through an appropriate entry in the Notes Register as provided herein.

This Note is subject to the following additional provisions:

1. No Prepayment; Conversion Rights and Obligations; Maturity Date Extension.

(a) The Company shall not prepay any amount of principal or accrued interest outstanding under this Note prior to the Maturity Date without the prior written consent of the Majority Noteholders (as defined in the Note Subscription Agreement).

(b) At the election of the Majority Noteholders, at their sole option and discretion, all principal and interest amounts then outstanding under all of the Notes shall be exchanged (the “Notes Conversion”) for shares of the Company’s common stock, par value \$0.001 per share (the “Common Stock”) at a price of \$0.04 per share (as adjusted for any stock split, stock dividend or other similar adjustment) (as adjusted, the “Conversion Price”); provided that if the Company shall, at any time or from time to time after the date of this Note, issue (or grant new rights permitting the issuance of) any Equity Securities (as defined below) other than Excluded Stock (as defined below) without consideration or for a consideration per share less than the Conversion Price in effect immediately prior to the issuance of such Equity Securities, then the Conversion Price in effect immediately prior to each such issuance shall be lowered to an amount equal to the lowest amount of per share consideration that was received for (or would be paid for, in the event rights permitting the issuance of any Equity Securities are issued by the Company) such Equity Securities that were issued. As used herein, “Equity Securities” means all shares of capital stock of the Company, all securities convertible or exchangeable for shares of capital stock of the Company, and all options, warrants, and other rights to purchase or otherwise acquire from the Company shares of such capital stock, including any stock appreciation or similar rights, contractual or otherwise. As used herein, “Excluded Stock” means (i) shares of Common Stock at any time issuable upon the exercise of options or other Equity Securities granted to directors, officers, bona fide consultants and employees of the Company issued pursuant to a board of directors-approved option or incentive plan, and (ii) stock, warrants or other securities issued to a bank or other financial institution in connection with a financing.

(c) The Company hereby covenants that upon receipt by the Company of notice by the Majority Noteholders that the Notes Conversion is being implemented, the Company shall take all measures requested by the Purchasers (as defined in the Note Subscription Agreement) to make available or authorize sufficient shares of Common Stock including, but not limited to, (i) calling a special meeting of the Company’s board of directors and/or holders of all classes of capital stock to authorize an amendment to the Company’s articles of incorporation authorizing the applicable shares of Common Stock issuable upon the Notes Conversion, (ii) filing such amendment with the Department of State of the State of Florida and (iii) taking any other action necessary to consummate the transactions contemplated hereby to permit the Notes Conversion to occur as promptly as practicable. Upon delivery, all such applicable shares of Common Stock

issuable upon the Notes Conversion shall be duly and validly issued and fully paid and nonassessable.

(d) At the election of Company, at its sole option and discretion, prior to the Maturity Date, the Company may elect to pay (on or promptly following the applicable Interest Payment Date) up to two (2) of the applicable accrued and unpaid semi-annual interest payments in the form of shares of Common Stock (at the price equal to the lesser of the then existing Conversion Price or the price at which the shares of Common Stock are then publicly trading, based on the average 20 day trailing closing price prior to the applicable Interest Payment Date).

(e) The Majority Noteholders may, at their sole option and discretion, extend the Maturity Date.

2. Notes. The Note is exchangeable for an equal aggregate principal amount of Notes of different authorized denominations, as requested by the Holders surrendering the same, but shall not be issuable in denominations less than integral multiples of ten thousand dollars (\$10,000). No service charge will be made for such registration of transfer or exchange.

3. Transfer. This Note has been issued subject to investment representations of the original purchaser hereof and may be transferred, assigned or exchanged only in compliance with the Securities Act of 1933, as amended (the "Securities Act"), including Regulation D promulgated under the Securities Act. Any Holder of this Note, by acceptance hereof, agrees to the representations, warranties and covenants herein. Prior to due presentment to the Company for transfer of this Note, the Company and any agent of the Company may treat the person in whose name this Note is duly registered on the Company's Notes Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Note be overdue, and neither the Company nor any such agent shall be affected by notice to the contrary.

(a) No Interference. The Company shall not close its books against the transfer of this Note.

(b) Non-Circumvention. The Company shall not, and shall cause its subsidiaries not to, directly or indirectly, by any action avoid or seek to avoid the observance or performance of any terms of this Note or impair or diminish its value, but shall at all times in good faith assist in carrying out of all such terms of this Note.

(c) Authority. The Company warrants and represents that: (i) it has all requisite corporate power and authority to enter into and perform its obligations under this Note and to issue and deliver the Note to the Holder; (ii) the execution, delivery, and performance by the Company of its obligations under this Note, including the issuance and delivery of the Note to the Holder, have been duly authorized by all necessary corporate action on the part of the Company; and (iii) this Note has been duly executed and delivered by the Company and is a legal, valid and binding obligation of the Company and is enforceable against the Company in accordance with its terms.

(d) Governmental Actions. Without limiting the generality of the foregoing, the Company shall obtain all such authorizations, exemptions or consents from any public regulatory body having jurisdiction thereof as may be necessary to enable the Company to perform its obligations under this Note.

4. No Impairment. Except as expressly provided herein, no provision of this Note shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, and interest on, this Note at the time, place, and rate, and in the manner herein prescribed. This Note and all other Notes now and hereafter issued of similar terms are direct obligations of the Company.

5. Termination. After this Note shall have been fully surrendered in connection with (a) any payment in full of the outstanding principal and interest or (b) any exchange for Common Stock or similar equity rights pursuant to Section 1(b), this Note shall no longer be deemed to be outstanding and all rights with respect to this Note, including, without limitation, the right to receive interest hereon and the principal hereof, shall forthwith terminate.

6. Costs and Expenses. The Company agrees to pay all costs and expenses, including reasonable attorney's fees, which may be incurred by the Holder in collecting any amount due under this Note.

7. Events of Default; Remedies. If one or more of the following described "Events of Default" shall occur:

(a) The Company shall default in the payment of principal or interest on these Notes;  
or

(b) Any of the representations or warranties made by the Company in the Note Subscription Agreement or herein, or in any certificate or financial or other written statements heretofore or hereafter furnished by or on behalf of the Company or any of its subsidiaries in connection with the execution and delivery of this Note shall be false or misleading in a any material respect at the time made; or

(c) The Company shall fail to perform or observe, in any material respect, any other covenant, term, provision, condition, agreement or obligation of the Company under this Note or the Note Subscription Agreement and such failure shall continue uncured for a period of fifteen (15) business days after notice from Holder of such failure; or

(d) The Company or any of its subsidiaries shall (1) admit in writing its inability to pay its debts generally as they mature; (2) make an assignment for the benefit of creditors or commence proceedings for its dissolution; or (3) apply for or consent to the appointment of a trustee, liquidator or receiver for its or for a substantial part of its property or business; or

(e) A trustee, liquidator or receiver shall be appointed for the Company, any of its subsidiaries or for a substantial part of their respective property or business without their consent and shall not be discharged within forty five (45) business days after such appointment; or

(f) Any governmental agency or any court of competent jurisdiction at the instance of any governmental agency shall assume custody or control of the whole or any substantial portion of the properties or assets of the Company or any of its subsidiaries and shall not be dismissed within forty five (45) business days thereafter; or

(g) Bankruptcy, reorganization, insolvency or liquidation proceedings or other proceedings for relief under any bankruptcy law or any law for the relief of debtors shall be instituted by or against the Company or any of its subsidiaries and, if instituted against the Company or any of its subsidiaries shall not be dismissed within forty five (45) business days after such instruction or if the Company or any of its subsidiaries shall by any action or answer approve of, consent to, or acquiesce in any such proceedings or admit the material allegations of, or default in answering a petition filed in any proceeding; or

(h) Cessation by the Company or any of its subsidiaries of doing business in the ordinary course; or

(i) A material adverse change to the Company's or any of its subsidiaries business condition (financial or otherwise), earnings, properties, prospects or results of operations of the Company or any of its subsidiaries taken as a whole.

Then, or at any time thereafter, and in each and every such case, unless such Event or Default shall have been waived in writing by the Majority Noteholders (which waiver shall not be deemed to be a waiver of any subsequent default) at the option of the Majority Noteholders and in the Majority Noteholders' sole discretion, the principal (and any accrued interest) amount of this Note shall become immediately due and payable, without presentment, demand protest or notice of any kind, all of which are hereby expressly waived, anything herein or in any note or other instruments contained to the contrary notwithstanding, and the Majority Noteholders may immediately, enforce any and all of the Holder's rights and remedies provided herein or any other rights or remedies afforded by law.

8. Lost or Destroyed Note. If this Note shall be mutilated, lost, stolen or destroyed, the Company shall execute and deliver, in exchange and substitution for and upon cancellation of a mutilated Note, or in lieu of or in substitution for a lost, stolen or destroyed Note, a new Note for the principal amount of this Note so mutilated, lost, stolen or destroyed, but only upon receipt of evidence of such loss, theft or destruction of such Note, and of the ownership thereof, and indemnity and bond, if requested, all reasonably satisfactory to the Company.

9. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of New York, without giving effect to the principles of conflicts of laws.

10. Business Day Definition. For purposes hereof, the term "business day" shall mean any day on which banks are generally open for business in the State of New York, USA and excluding any Saturday and Sunday.

11. Notices. Any notice, demand or request required or permitted to be given by either the Company or the Holder pursuant to the terms of this Note shall be made in accordance with Section 11 of the Note Subscription Agreement.

12. Waiver. Any waiver by the Company, the Holders hereof or the Majority Noteholders of a breach of any provision of this Note shall not operate as or be construed to be a waiver of any breach of such provision or of any breach of any other provision of this Note. The failure of the Company, the Holder hereof or the Majority Noteholders to insist upon strict adherence to any term of this Note on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Note. Subject to the terms of Section 10 of the Note Subscription Agreement, any waiver must be in writing and signed by such party against whom such waiver is sought to be enforced.

13. Notices of Certain Actions. In case at any time the Company shall propose to:

(a) pay any dividend or make any distribution on shares of Common Stock in shares of Common Stock or equivalents thereto or make any other distribution; or

(b) issue any rights, warrants or Common Stock to any holders of Common Stock entitling them to purchase any additional shares of Common Stock or any other rights, debentures, warrants or other Common Stock; or

(c) effect any reclassification or change of outstanding shares of Common Stock, or any consolidation, merger, sale (or similar transaction), lease or conveyance of property (not in the Company's ordinary course of business); or

(d) effect any liquidation, dissolution or winding-up of the Company;

then, and in any one or more of such cases (a) through (d), the Company shall, subject to any other Sections of this Note, give written notice thereof, by certified mail, postage prepaid, or by facsimile, electronic mail (or similar electronic transmission) to the Holder at the Holder's address as it shall appear in the Notes Register, mailed at least fifteen (15) days prior to (i) the date as of which the holders of record of shares of securities to be entitled to receive any such dividend, distribution, rights, debentures, warrants or other securities are to be determined or (ii) the date on which any such reclassification, change of outstanding shares of Common Stock, consolidation, merger, sale, lease, conveyance of property, liquidation, dissolution or winding-up is expected to become effective, and the date as of which it is expected that holders of record of shares of Common Stock shall be entitled to exchange their shares for securities or other property, if any, deliverable upon such reclassification, change of outstanding shares, consolidation, merger, sale, lease, conveyance of property, liquidation, dissolution or winding-up.

14. Unenforceable Provisions. If any provision of this Notice is invalid, illegal or unenforceable, the balance of this Notice shall remain in effect, and if any provision is inapplicable to any person or circumstance, it shall nevertheless remain applicable to all other persons and circumstances.

15. Restriction on Redemption and Dividends. Until all of the Notes issued (on or after the date hereof) pursuant to the Note Subscription Agreement have been paid in full, exchanged or otherwise satisfied in accordance with their terms, the Company shall not, directly or indirectly, (A) repurchase, redeem, or declare or pay any cash dividend or distribution on, the Common Stock or (B) distribute any material property or assets of any kind to holders of the Common Stock in respect of the Common Stock.

16. Senior Secured Ranking. As security for all obligations under the Notes, certain subsidiaries of the Company have granted to the Collateral Agent (as defined in the Note Subscription Agreement), as the collateral agent from the Purchasers, a first priority security interest in the Collateral (as defined in the Note Subscription Agreement) pursuant to the Security Agreement (as defined in the Note Subscription Agreement).

17. Payment of Collection, Enforcement and Other Costs. If (a) this Note is placed in the hands of an attorney for collection or enforcement or is collected or enforced through any legal proceeding or the Holder otherwise takes action to collect amounts due under this Note or to enforce the provisions of this Note or (b) there occurs any bankruptcy, reorganization, receivership of the Company or other proceedings affecting Company creditors' rights and involving a claim under this Note, then the Company shall pay the reasonable costs incurred by the Holder for such collection, enforcement or action or in connection with such bankruptcy, reorganization, receivership or other proceeding, including, but not limited to, reasonable attorneys' fees and disbursements.

18. Construction; Headings. This Note shall be deemed to be jointly drafted by the Company and the Holder and shall not be construed against any person as the drafter hereof. The headings of this Note are for convenience of reference and shall not form part of, or affect the interpretation of, this Note.

19. Remedies, Characterizations, Other Obligations, Breaches and Injunctive Relief. The remedies provided in this Note shall be cumulative and in addition to all other remedies available under this Note and any of the other Transaction Documents (as defined in the Note Subscription Agreement), at law or in equity (including a decree of specific performance and/or other injunctive relief), and nothing herein shall limit the Majority Noteholders' right to pursue actual damages for any failure by the Company to comply with the terms of the Notes. Amounts set forth or provided for herein with respect to payments shall be the amounts to be received by the Holder and shall not, except as expressly provided herein, be subject to any other obligation of the Company (or the performance thereof). The Company acknowledges that a breach by it of its obligations hereunder will cause irreparable harm to the Holder and that the remedy at law for any such breach may be inadequate. The Company therefore agrees that, in the event of any such breach or threatened breach, the Majority Noteholders shall be entitled, in addition to all other available remedies, to an injunction restraining any breach, without the necessity of showing economic loss and without any bond or other security being required.

20. Waiver of Notice. To the extent permitted by law, the Company hereby waives demand, notice, protest and all other demands and notices in connection with the delivery, acceptance, performance, default or enforcement of this Note and the Note Subscription Agreement.

\* \* \* \* \*

**IN WITNESS WHEREOF**, the Company has caused this Note to be duly executed by an officer thereof duly authorized.

Environmental Solutions Worldwide, Inc.

By: \_\_\_\_\_

Name:

Title:

**Exhibit 4.3**

**SECURITY AGREEMENT** (this “Security Agreement”) dated as of March 22, 2013, made by **TECHNOLOGY FABRICATORS INC.**, a Delaware corporation (“Technology Fabricators”), **ESW AMERICA INC.**, a Delaware corporation (“ESW America”), **ESW TECHNOLOGIES INC.**, a Delaware corporation (“ESW Technologies”, and together with Technology Fabricators and ESW America, the “Grantor”), and in favor of **ORCHARD CAPITAL CORP.**, as the collateral agent (the “Collateral Agent”), on behalf of the purchaser parties (each a “Secured Party” and together, the “Secured Parties”) set forth on Schedule I to the Note Subscription Agreement (the “Note Subscription Agreement”) dated as of the date hereof among the Collateral Agent, the Secured Parties and Environmental Solutions Worldwide, Inc., a Florida corporation and the corporate parent of the Grantor (“ESWW”).

A. ESWW issued (and committed to issue, subject to certain conditions) to the Secured Parties, and the Secured Parties purchased (and committed to purchase, subject to certain conditions), concurrently with the execution of this Security Agreement, the senior secured convertible promissory notes (the “Notes”) set forth on Schedule I to the Note Subscription Agreement.

B. This Security Agreement provides the terms and conditions upon which ESWW’s payment and performance obligations under the Notes (collectively, the “Secured Obligations”) are secured by the collateral described herein.

C. In the Note Subscription Agreement the Secured Parties and the Collateral Agent entered into certain agreements relating to collateral administration matters, pursuant to which the Secured Parties authorized the Collateral Agent to execute this Security Agreement and enforce its rights hereunder on behalf of the Secured Parties.

D. In connection with the Notes (from which the Grantor acknowledges and agrees that it shall receive substantial benefit), the Grantor desires to grant, and the Collateral Agent desires to accept, a senior security interest and the Collateral, all on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the premises, and in consideration of the mutual representations, warranties, and covenants herein contained, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Collateral Agent to enter into the Transaction Documents (as defined in the Note Subscription Agreement), the Grantor and the Collateral Agent hereby agree as follows:

**E. Grant of Security.**

The Grantor hereby assigns, conveys, mortgages, pledges, grants and transfers to the Collateral Agent, a lien on and a security interest in, all of the right, title and interest of the Grantor in and to the following, whether now owned or hereafter acquired, now or hereafter existing, wherever located (collectively, the “Collateral”):

F. all cash, accounts (including, without limitation, any “account” as such term is defined in the Uniform Commercial Code of the State of New York (the “UCC”) to be applied in connection with the perfection of a security interest in favor of the Collateral Agent under this Security Agreement), accounts receivable, other receivables, letters of credit, contract rights (including, but not limited to, all rights of the Grantor to receive moneys due and to become due under or pursuant to such accounts, accounts receivable, other receivables, letters of credit and contract rights and all of the Grantor’s rights to terminate, and to perform, compel performance and otherwise exercise all remedies under, such accounts, accounts receivable, other receivables, letters of credit and contract rights (including, without limitation, unpaid seller’s rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods)), documents, notes and other obligations of any kind, now or hereafter existing, whether or not arising out of or in connection with the sale or lease of goods or rendering of services, and all rights now or hereafter existing in and to all mortgages, deeds of trust, security agreements, leases and other contracts (including, but not limited to, any amendments, supplements, modifications, renewals, extensions, replacements and substitutions thereto) securing or otherwise relating to any such cash, accounts, accounts receivable, other receivables, letters of credit, contract rights, documents, notes or other obligations (any and all such cash, accounts, accounts receivable, other receivables, letters of credit, contract rights, documents, notes and obligations being the “Receivables”, any and all such mortgages, leases, security agreements and other contracts being the “Related Contracts”; and any Person who is or may become obligated to the Grantor under, with respect to, or on account of, any Receivable being an “Account Debtor”);

G. the shares of common stock, limited liability company interests or other equity interests which may come into the possession of Grantor and all other shares of capital stock of whatever class, now or hereafter owned or held by Grantor, together with the certificates evidencing the same, and all Financial Assets (as defined in the UCC) now or hereafter owned by Grantor, including all Securities (as defined in the UCC), together with any certificates evidencing the same (collectively, the “Pledged Securities”);

H. all rights and privileges of Grantor with respect to the Pledged Securities, all shares, securities, moneys or property representing a dividend on or proceeds of any of the Pledged Securities, or representing a distribution or return of capital upon or in respect of the Pledged Securities, or resulting from a split-up, revision, reclassification or other like change of the Pledged Securities or otherwise receive in exchange therefor, and any subscription warrants, rights or options issued to the holders of, or otherwise in respect of, the Pledged Securities;

I. all Instruments (means any “instrument”, as such term is defined in the UCC, and shall include without limitation, promissory notes, drafts, bills of exchange, trade acceptances, letters of credit and Chattel Paper (as defined in the UCC)) of Grantor;

J. all Inventory (as defined in the UCC) of Grantor;

K. all General Intangibles (as defined in the UCC) of Grantor including, without limitation, all warranties, rights under insurance policies, indemnification rights arising out of any Contract (as defined in the UCC) to which Grantor is a party;

- L. all Equipment (as defined in the UCC) of Grantor;
- M. all Documents (as defined in the UCC) of Grantor, including, without limitation, all negotiable and non-negotiable bills of lading;
- N. all material contracts (the “Contracts”) of Grantor, including without limitation any agreement relating to the sale, use of management of any real property now or hereafter owned or leased by Grantor;
- O. all Goods (as defined in the UCC) of Grantor;
- P. all Fixtures (as defined in the UCC) of Grantor;
- Q. the balance from time to time in any bank, savings, money market or other depository account of Grantor, whether now or hereafter maintained;
- R. the “Intellectual Property Collateral”, which term means:

S. all rights, title and interest (including rights acquired pursuant to a license or otherwise) in and to all trademarks, service marks, designs, logos, indicia, tradenames, trade dress, corporate names, company names, business names, fictitious business names, trade styles and/or other source and/or business identifiers and applications pertaining thereto, owned by Grantor, or hereafter adopted and used, in its business (collectively, the “Trademarks”), all registrations that have been or may hereafter be issued or applied for thereon in the United States and any state thereof and in foreign countries (the “Trademark Registrations”), all common law and other rights in and to the Trademarks in the United States and any state thereof and in foreign countries (the “Trademark Rights”), and all goodwill of Grantor’s business symbolized by the Trademarks and associated therewith (the “Associated Goodwill”):

T. all rights, title and interest (including rights acquired pursuant to a license or otherwise) in and to all patents and patent applications and rights and interests in patents and patent applications under any domestic or foreign law that are presently, or in the future may be, owned or held by Grantor and all patents and patent applications and rights, title and interests in patents and patent applications under any domestic or foreign law that are presently, or in the future may be, owned by Grantor in whole or in part, all rights corresponding thereto, and all re-issues, divisions, continuations, renewals, extensions and continuations-in-part thereof (all of the foregoing being collectively referred to as the “Patents”); it being understood that the rights and interests included in the Intellectual Property Collateral hereby shall include, without limitation, all rights and interests pursuant to licensing or other contracts in favor of Grantor pertaining to patent applications and patents presently or in the future owned or used by third parties but, in the case of third parties which are not affiliates of Grantor, only to the extent permitted by such licensing or other contracts and, if not so permitted, only with the consent of such third parties; and

U. all rights, title and interest (including rights acquired pursuant to a license or otherwise) under copyright in various published and unpublished works of authorship including, without limitation, computer programs, computer data bases, other computer software, layouts, trade dress, drawings, designs, writings, and formulas owned by Grantor (collectively, the “Copyrights”), all copyright registrations issued to Grantor and applications for copyright registration that have been or may hereafter be issued or applied for thereon by Grantor in the United States and any state thereof and in foreign countries, all common law and other rights in and to the Copyrights in the United States and any state thereof and in foreign countries including all copyright licenses (but with respect to such copyright licenses, only to the extent permitted by such licensing arrangements) (the “Copyright Rights”), including, without limitation, each of the Copyrights, rights, titles and interests in and to the Copyrights, all derivative works and other works protectable by copyright, which are presently, or in the future may be, owned, created (as a work for hire for the benefit of Grantor), authored (as a work for hire for the benefit of Grantor), or acquired by Grantor, in whole or in part, and all Copyright Rights with respect thereto and all Copyright Registrations therefor, heretofore or hereafter granted or applied for, and all renewals and extensions thereof, throughout the world, including all proceeds thereof (such as, by way of example and not by limitation, license royalties and proceeds of infringement suits), the right to renew and extend such Copyright Registrations and Copyright Rights and to register works protectable by copyright and the right to sue for past, present and future infringements of the Copyrights and Copyright Rights;

V. all other tangible and intangible property of Grantor, including, without limitation all cash and noncash proceeds, products, accessions, rents, profits, income, benefits, substitutions, additions and replacements of and to any of the property of Grantor described in the preceding clauses of this Section 1 (including, without limitation, any proceeds of insurance thereon and all rights, claims and benefits against any person relating thereto) and, to the extent related to any property described in said clauses or such proceeds, products and accessions, all books, correspondence, credit files, records, invoices and other papers, including without limitation all tapes, cards, computer runs and other papers and documents in the possession or under the control of Grantor or any computer bureau or service company from time to time acting for Grantor.

**W. Security for Obligations.**

X. The security interest granted by the Grantor hereunder secures the prompt and complete payment and performance when due (whether at stated maturity, upon acceleration or otherwise) of all the Secured Obligations now or hereafter existing, whether matured or unmatured, contingent or liquidated, under the Notes including any extensions, modifications, substitutions, amendments and renewals thereof, whether for principal, interest, premium, fees, expenses or otherwise.

**Y. Grantor Remains Liable.**

Anything herein to the contrary notwithstanding, (i) the Grantor shall remain liable under the contracts and agreements included in the Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Security Agreement had not been executed, (ii) the exercise by the Collateral Agent of any of the rights hereunder shall not release the Grantor from any of its duties or obligations in connection with the general intangibles and under the contracts and agreements included in the Collateral, (iii) the Collateral Agent shall not have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Security Agreement, nor shall it be obligated to perform any of the obligations or duties of the Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder, and (iv) the Collateral Agent shall not assume any liability or obligation whatsoever with respect to any membership or limited liability company interest of any limited liability company or any partnership interest of any partnership included in the Collateral, nor shall it become a substituted member or partner of any such limited liability company or partnership solely by virtue of this Security Agreement.

#### **Z. Representations and Warranties.**

The Grantor, as of the date hereof, represents and warrants as follows:

AA. The chief place of business and chief executive office of the Grantor and the office where it keeps its records concerning the Receivables and the Collateral, and the original copies of the Contracts owned by it and in its possession and of all Chattel Paper that evidences Collateral owned by it, are located at the addresses set forth on Part I of Schedule 4(a) hereto. The federal tax identification number of the Grantor is set forth in Part II of Schedule 4(a). The trade names, if any, of the Grantor are set forth on Part III of Schedule 4(a).

BB. The Grantor is the legal and beneficial owner of the Collateral purported to be granted by it hereunder free and clear of any lien, except for the security interest created by this Security Agreement and those listed on Schedule 4(b) (the “Permitted Liens”). No effective financing statement or other instrument similar in effect covering all or any part of such Collateral is on file in any recording office, except such as may have been filed in favor of the Collateral Agent relating to this Security Agreement or such as may have been filed in connection with the Permitted Liens.

CC. This Security Agreement, together with the filing of financing statements with respect hereto creates a valid and perfected first priority lien on and security interest in the Collateral owned by the Grantor (other than Collateral which has a Permitted Lien attached, and for such Collateral, this Security Agreement, together with the filing of financing statements with respect hereto creates a valid and perfected lien and security interest in such Collateral), securing the payment of the Secured Obligations.

#### **DD. Further Assurances.**

EE. The Grantor agrees that from time to time, at Grantor’s expense, it will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Collateral Agent may request, in order to perfect and protect any security

interest granted or purported to be granted hereby or to enable the Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, the Grantor will: (i) at the request of the Collateral Agent, mark conspicuously each document and each chattel paper included in the Receivables and each Related Contract and each of its records pertaining to the Collateral with a legend, in form and substance satisfactory to the Collateral Agent, indicating that such document, chattel paper, Related Contract or Collateral is subject to the security interest granted hereby; (ii) if any Receivable shall be evidenced by a promissory note or other instrument or chattel paper, at the request of the Collateral Agent, deliver and pledge to the Collateral Agent hereunder such note, instrument or chattel paper duly indorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to the Collateral Agent; and (iii) execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Collateral Agent may request, in order to perfect and preserve the security interests granted or purported to be granted hereby; provided that neither the failure of the Collateral Agent to make such demand nor the failure of the Grantor to comply with such demand will impair or affect the validity of the grant effected by this Security Agreement.

FF. The Grantor hereby authorizes the Collateral Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of the Grantor where permitted by law. A carbon, photographic or other reproduction of this Security Agreement or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

GG. The Grantor will furnish to the Collateral Agent from time to time statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Collateral Agent may reasonably request, all in reasonable detail.

**HH. As to Receivables and Related Contracts.**

II. The Grantor shall keep its chief place of business and chief executive office and the office where it keeps its records concerning its Receivables and the original copies of the Related Contracts, and all chattel paper which evidences or constitutes Receivables, at the locations therefor specified in Schedule 4(a) or upon written notice to the Collateral Agent, at such other locations in a jurisdiction where all actions required by Section 5 shall have been taken with respect to the Receivables, the Related Contracts and such chattel paper. The Grantor will hold and preserve such records, Receivables, Related Contracts and chattel paper and will permit representatives of the Collateral Agent at any time during normal business hours to inspect and make abstracts therefrom.

JJ. The Grantor shall continue to collect, at its own expense, all amounts due or to become due under the Receivables and the Related Contracts. The Collateral Agent shall have the right at any time, upon the occurrence and during the continuance of an Event of Default, to notify the Account Debtors or obligors under any Receivables and Related Contracts of the assignment of such Receivables and Related Contracts to the Collateral Agent and to direct such Account

Debtors or obligors to make payment of all amounts due or to become due to the Grantor thereunder directly to the Collateral Agent and, at the expense of the Grantor, to enforce collection of any such Receivables or Related Contracts, and to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as the Grantor might have done. Upon receipt by the Grantor of any amounts and proceeds (including instruments) in respect of the Receivables and the Related Contracts or, with respect to the Grantor, upon the occurrence and during the continuance of an Event of Default, (i) all amounts and proceeds (including instruments) received by the Grantor in respect of the Receivables and the Related Contracts shall be received in trust for the benefit of the Collateral Agent hereunder, shall be segregated from other funds of the Grantor and shall be forthwith paid directly to the form as so received (with any necessary endorsement) to be held as Collateral hereunder. Upon request of the Collateral Agent, the Grantor will execute a collateral assignment of any Related Contract and cause any counterparty to such Related Contract to acknowledge such collateral assignment.

**KK. Transfers and Other Liens.**

The Grantor shall not create or suffer to exist any Lien upon or with respect to any of the Collateral, except for (a) the security interest created by this Security Agreement and (b) existing Permitted Liens.

**LL. Remedies.**

If an Event of Default (as defined in the Notes) shall have occurred and be continuing:

MM. The Collateral Agent may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC (whether or not the UCC applies to the affected Collateral) and also may (i) require the Grantor to, and the Grantor hereby agrees that it will at its expense and upon request of the Collateral Agent forthwith, assemble all or part of the Collateral owned by it as directed by the Collateral Agent and make it available to the Collateral Agent at a place to be designated by the Collateral Agent which is reasonably convenient to each party and (ii) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Collateral Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Collateral Agent may deem commercially reasonable. The Grantor agrees that, to the extent notice of sale shall be required by law, at least thirty days' notice to the Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Collateral Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Collateral Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

NN. The Collateral Agent may exercise any and all rights and remedies of the Grantor under or in connection with the Related Contracts or otherwise in respect of the Collateral, including, without limitation, any and all rights of the Grantor to demand or otherwise

require payment of any amount under, or performance of any provision of, the Receivables or the Related Contracts.

OO. All cash proceeds received by the Collateral Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral of the Grantor may, in the discretion of the Collateral Agent, be held by the Collateral Agent as collateral for, and/or then or at any time thereafter applied in whole or in part by the Collateral Agent against, all or any part of the Secured Obligations. Any surplus of such cash or cash proceeds held by the Collateral Agent and remaining after payment in full of all such Secured Obligations shall be paid over to the Grantor or to whomsoever may be lawfully entitled to receive such surplus.

**PP. Indemnity.**

The Grantor agrees to indemnify the Collateral Agent from and against any and all claims, losses and liabilities growing out of or resulting from this Security Agreement (including, without limitation, enforcement of this Security Agreement), except claims, losses or liabilities resulting from such indemnified person's gross negligence or willful misconduct.

**QQ. Continuing Security Interest; Transfer of Rights and Obligations.**

This Security Agreement shall create a continuing security interest in the Collateral and shall remain in full force and effect until the indefeasible payment in full of the Secured Obligations. If permitted pursuant to the Note, the Collateral Agent may assign or otherwise transfer, all or any portion of its rights and obligations under the Note to any other person, and such other person shall thereupon become vested with all the benefits in respect thereof granted to the Collateral Agent herein or otherwise.

**RR. Security Interest Absolute.**

SS. All rights of the Collateral Agent and security interests hereunder, and all obligations of the Grantor hereunder, shall be absolute and unconditional irrespective of:

TT. any lack of validity or enforceability of any Transaction Document or any other agreement or instrument relating thereto;

UU. any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations, or any other amendment or waiver of or any consent to any departure from any of the Transaction Documents;

VV. any taking and holding of Collateral or additional guarantees for all or any of the Secured Obligations, or any amendment, alteration, exchange, substitution, transfer, enforcement, waiver, subordination, termination or release of any Collateral or such guarantees, or non-perfection of any Collateral, or any consent to departure from any guaranty, for all or any of the Secured Obligations;

WW. any manner of application of Collateral, or proceeds thereof, to all or any of the Secured Obligations, or the manner of sale of any Collateral;

XX. any consent by the Collateral Agent or any other person to the change, restructure or termination of the corporate structure or existence of the Grantor and any corresponding restructure of the Secured Obligations, or any other restructure or refinancing of the Secured Obligations or any portion thereof;

YY. any modification, compounding, compromise, settlement, release by the Collateral Agent or any other person (or by operation of law or otherwise), collection or other liquidation of the Secured Obligations or the liability of the Grantor or any guarantor, or of the Collateral, in whole or in part, and any refusal of payment by the Collateral Agent or any other Person, in whole or in part, from any obligor or guarantor in connection with any of the Secured Obligations, whether or not with notice to, or further assent by, or any reservation of rights against, the Grantor; or

ZZ. any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Grantor.

AAA. Without limiting the generality of the foregoing, the Grantor hereby consents to, and hereby agrees, that the rights of the Collateral Agent hereunder, and the liability of the Grantor hereunder, shall not be affected by any and all releases of any Collateral from the liens created by any Transaction Document, whether for purposes of sales or other dispositions of assets or for any other purpose. This Security Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the Secured Obligations is rescinded or must otherwise be returned by the Collateral Agent or any other person upon the insolvency, bankruptcy or reorganization of the Grantor, or otherwise, all as though such payment had not been made.

**BBB. Waivers.**

CCC. The Grantor hereby waives any requirement that the Collateral Agent or any other person protect, secure, protect or insure any lien or any property subject thereto or exhaust any right or take any action against the Grantor or any other person or any Collateral; and

DDD. The Grantor agrees that if all or a portion of the Secured Obligations are at any time secured by a deed of trust or mortgage covering interests in real property, the Collateral Agent, in its sole discretion, without notice or demand and without affecting the liability of the Grantor under this Security Agreement, may foreclose the deed of trust or mortgage and the interests in real property secured thereby by nonjudicial sale; and the Grantor hereby waives any defense to the recovery by the Collateral Agent, or any other person against the Grantor of any deficiency after a nonjudicial sale.

**EEE. Release of Collateral.**

Upon all of the principal and interest and other indebtedness evidenced by the Note having been repaid, then the security interests created hereby shall terminate and Collateral Agent shall release the Collateral. Upon any such termination of the security interests created

hereby and the release of the Collateral, the Collateral Agent will execute and deliver to the Grantor such documents as the Grantor shall reasonably request to evidence the termination of the security interests created hereby and the release of the Collateral.

**FFF. No Waiver; Cumulative Remedies.**

The Collateral Agent shall not by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing, signed by the Collateral Agent, and then only to the extent therein set forth. A waiver by the Collateral Agent of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Collateral Agent would otherwise have on any future occasion. No failure to exercise nor any delay in exercising on the part of the Collateral Agent, any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights or remedies provided by law.

**GGG. Incorporation by Reference of Note Subscription Agreement Provisions.**

Each of the provisions of Sections 9, 10, 11, 13, 14, 16, 17, 18, 19 and 20 of the Note Subscription Agreement are hereby incorporated by reference and shall be deemed to be a part of this Security Agreement as if fully set forth herein; provided that references in such sections to “this Agreement” shall be replaced for such purposes by references to “this Security Agreement”.

[Signature page follows]

**IN WITNESS WHEREOF**, the parties have executed this Security Agreement as of the date first above written.

**TECHNOLOGY FABRICATORS INC.**

By: \_\_\_\_\_  
Name:  
Title:

**ESW AMERICA INC.**

By: \_\_\_\_\_  
Name:  
Title:

**ESW TECHNOLOGIES INC.**

By: \_\_\_\_\_  
Name:  
Title:

**ORCHARD CAPITAL CORP.**, as the Collateral Agent for the Secured Parties

By: \_\_\_\_\_  
Richard S. Ressler  
President

**Schedule 4(a)**

**Schedule 4(b)**