

# **EXCHANGE OF PROPRIETARY INFORMATION AND NON-DISCLOSURE AGREEMENT**

## **EXCHANGE OF PROPRIETARY INFORMATION AND NON-DISCLOSURE AGREEMENT**

between

**DENEL SOC LTD trading as DENEL LAND SYSTEMS INCORPORATING MECHEM**  
(Registration No 1992/001337/30),  
a company duly incorporated according to the laws of the Republic of South Africa  
having its place of business at 368 Selborne Avenue, Lyttelton, Centurion  
(hereinafter referred to as "DLS")

And

**(Registration No.):**

A company duly incorporated according to the laws of the Republic of South Africa  
having its place of business at  
(hereinafter referred to as " ")

(Collectively referred to as the "PARTIES" or each of them as the "PARTY")

**WHEREAS** DLS is a landward defence system solutions business as a systems integrator, subsystem and product supplier. DLS is a consolidated, program based systems house for development, production, maintenance and upgrades of infantry systems, artillery gun systems and combat turrets as well as small arms systems with a vehicle capability and possesses valuable information, technical knowledge, experience and data of a secret and proprietary nature in relation to this area of activity; and

**WHEREAS** ; and

**WHEREAS**, during the course of discussion and potential future contractual relationships it may become desirable or necessary for the Parties hereto to disclose to each other certain technical or business information of a proprietary or confidential nature; and

**WHEREAS** the Parties hereto are willing to provide for the conditions of such disclosure of Proprietary Information and the rules governing the use and the protection thereof;

**NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:**

1. As used in this Agreement the term "Proprietary Information" shall mean any information or data disclosed by either Party to the other, pursuant to this Agreement, either in writing, orally or on software, subject to the conditions set forth hereinafter, and including without limitation any written, printed or magnetic documents or any means of disclosing such Proprietary Information that the Parties may elect to use during the life of this Agreement.
2. Nothing in this Agreement may be construed as compelling either Party hereto to disclose any Proprietary Information to the other, or to enter into any further contractual relationships.
3. Each Party, to the extent of its right to do so, shall disclose to the other Party only such Proprietary Information that the disclosing Party deems appropriate to fulfil the objectives of this Agreement as set up in the recitals. The Parties hereby represent that the disclosure of Proprietary Information by and between themselves is not contrary to the laws and regulations of their respective countries.
4. Any information or data in whatever form disclosed by either Party to the other and which is designated as proprietary to the disclosing Party by an appropriate stamp, legend or any other notice in writing, or when disclosed orally, has been identified as proprietary at the time of disclosure and has been promptly (thirty (30) days at the latest) confirmed and designated in writing as Proprietary Information of the disclosing Party, shall be subject to the conditions set out in this Agreement.
5. The receiving Party hereby covenants that, for a period of 5 (five) years from the effective date of this Agreement, the Proprietary Information received from the disclosing Party shall -

- (a) be protected and kept in strict confidence by the receiving Party which must use the same degree of precaution and safeguards as it uses to protect its own Proprietary Information of like importance, but in no case any less than reasonable care;
  - (b) be only disclosed to and used by those persons who have a need to know and solely for the purpose specified in the recitals, within the receiving Party's organisation;
  - (c) not be used in whole or in part for any purpose other than the purpose specified in the recitals without the prior written consent of the disclosing Party;
  - (d) neither be disclosed nor caused to be disclosed whether directly or indirectly to any third party or persons other than those mentioned in subparagraph (b) above;
  - (e) neither be copied, nor otherwise reproduced nor duplicated in whole or in part where such copying, reproduction or duplication have not been specifically authorised in writing by the disclosing Party.
6. Any Proprietary Information and copies thereof disclosed by either Party to the other shall remain the property of the disclosing Party and shall be returned by the receiving Party immediately upon request.
7. Except as aforementioned, the receiving Party shall have no obligations or restrictions with respect to any Proprietary Information, which the receiving Party can prove -
- (a) has come into the public domain prior to, or after the disclosure thereof and in such case through no wrongful act of the receiving Party; or
  - (b) is already known to the receiving Party, as evidenced by written documentation in the files of the receiving Party; or
  - (c) has been lawfully received from a third party without restrictions or breach of this Agreement; or
  - (d) has been or is published without violation of this Agreement; or
  - (e) is independently developed in good faith by employees of the receiving Party who did not have access to the Proprietary Information; or
  - (f) is approved for release or use by written authorisation of the disclosing Party.
8. Any Proprietary Information disclosed by the Parties under this Agreement that is Classified Information shall be identified by the disclosing Party as Classified Information at the time of

disclosure, protection, use and handling of such information shall be in accordance with security procedures prescribed by the appropriate Government.

9. It is expressly understood and agreed by the Parties hereto that the disclosure and provision of Proprietary Information under this Agreement by either Party to the other shall not be construed as granting to the receiving Party and any rights whether expressed or implied by licence or otherwise on the matters, inventions or discoveries to which such Proprietary Information pertains or any copyright, trademark or trade secret rights. The property in all information and/or data disclosed by either Party to the other pursuant to this Agreement and which is designated as proprietary in accordance with paragraph 4 of this Agreement shall, subject to any right of any other owner, rest with the disclosing Party.
10. The execution, existence and performance of this Agreement shall be kept confidential by the Parties hereto and shall not be disclosed by either Party without the prior written consent of the other.
11. This Agreement, including all rights and obligations of the Parties hereto, except the obligations specified in paragraph 14 below, may be terminated by either Party at any time on 30 (thirty) days prior written notice to the other.
12. The duration of this Agreement is 3 (three) years from date of signature, however the end or termination of this Agreement, shall not relieve the receiving Party of complying with the obligations imposed by paragraphs 5 and 6 thereof with respect to the use and protection of the Proprietary Information received prior to the date of the termination or end of this Agreement.
13. This Agreement will be governed by and shall be interpreted in accordance with the laws of South Africa.
14. Any and all disputes arising out of or in connection with this Agreement which the Parties are unable to resolve between themselves shall be finally settled by arbitration in South Africa under the Rules of the Arbitration Foundation of South Africa by one or more arbitrators appointed in accordance with the said Rules, which arbitration shall be held in the English language.
15. The parties shall not, during the duration of this Agreement, either for itself or as the agent of anyone else, persuade, induce, solicit, encourage or procure any employee of the other party to become employed by or interested in any manner whatsoever in any business, firm, undertaking or company (all of which are hereinafter referred to as "any concern") of the former, directly or indirectly in competition with the business carried on by the other party; furnish any information or advice acquired by one party about the other party during the course of its business with each other to anyone else which results in any employee of the one party becoming employed by the other party, or results in the employee becoming directly or indirectly interested in any manner, in any concern of the other party; solicit, interfere with, entice or endeavour to entice away from one

party to another party, any person, firm or company who or which during the period of this agreement or at the termination date, was a customer or was accustomed to dealing with the other party.

16. The foregoing constitutes the entire agreement between the Parties with regards to the objectives of this Agreement and with respect to the exchange of Proprietary Information and supersedes and cancels all prior representations, negotiations, commitments, undertakings, communications, whether oral or written, acceptances, understandings and agreements between the Parties with respect to such exchange of Proprietary Information.
17. No amendments of, additions to, consensual cancellation or novation of this AGREEMENT in its entirety, or of any term or condition thereof, shall be of any force or effect unless such amendment, addition, cancellation or novation is agreed to between the PARTIES.
18. The effective date of this Agreement shall be the date on which it is executed by both Parties hereto.

Signed and agreed on behalf of \_\_\_\_\_ at CENTURION on this \_\_\_\_\_ day of \_\_\_\_\_ 2016, by  
in his capacity as \_\_\_\_\_

AS WITNESSES:

1. ....

2. ....

For and on behalf of:  
(duly authorised thereto)

Signed and agreed on behalf of DLS at CENTURION on this \_\_\_\_\_ day of \_\_\_\_\_ 2016,  
by **MR STEPHAN BURGER** in his capacity as **CHIEF EXECUTIVE OFFICER: DLS**.

AS WITNESSES:

1. ....

2. ....

For and on behalf of: DLS  
(duly authorised thereto)