

NON-DISCLOSURE AGREEMENT

THIS AGREEMENT IS MADE BY AND BETWEEN

DENEL SOC Ltd trading as Denel Land Systems incorporating Mechem, a state owned company with limited liability duly incorporated in terms of the Laws of the Republic of South Africa, with Registration number: 1992/001337/30 and with its principal place of business at 368 Selbourne Avenue, Lyttelton, Pretoria, Republic of South Africa ('hereinafter referred to as 'Denel')

AND

[.....]
[Hereinafter referred to as the "Offeror"]

In order to protect the Proprietary Information that may be disclosed between them, Denel and [.....] (hereinafter referred to jointly as the 'Parties' and individually as the 'Party') hereby agree as follows:

WHEREAS:

- a. Denel is a company wholly owned by the Republic of South Africa and has longstanding internationally recognised expertise and substantial intellectual property in the design, development, manufacturing, marketing and sale of Defence equipment, sub-systems and systems for both the South African and international markets. Denel possesses valuable information, business and technical knowledge, experience and data of a secret or confidential and proprietary nature in relation to its business; and

Whereas

- b. Denel has issued a Request for Quotation ("RFQ") for the supply of [.....], through a supply chain process, and the Offeror intends to submit a proposal in response to the RFQ, ("the Purpose").
- c. This Agreement shall under no circumstances or in any manner be a formal cooperative, joint venture or partnership of any sort between the Parties.
- d. Neither Party shall have the right to bind the other Party as a consequence of this Agreement, nor may they purport to do so.

- e. During the course of such supply chain process, it may become necessary for the Parties to disclose to each other certain technical or business information of a proprietary or confidential nature (hereinafter referred to as 'Proprietary Information'); and
- f. The Parties 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. The Party disclosing information is referred to in this Agreement as the 'Disclosing Party' and the Party receiving information is referred to as the 'Receiving Party'.
2. For the purposes of this Agreement, the term 'Proprietary Information' shall mean any information or data disclosed by a Party to the other Party for the Purpose pursuant to this Agreement, in writing or other tangible/visible form, subject to the conditions set forth hereafter, and including without limitation, any written or printed business methods and practices; personnel; customers; existing or prospective customers and suppliers; information concerning inventions, processes, methods, products, patents, patent applications, intellectual property and other proprietary rights; specifications, documents, data packs, drawings, models, samples, tools, computer programs, technical information, presentations and related materials; information located on the password-protected website of a Party; and/or all prepared notes, documents and materials which reflect, interpret, evaluate, include or are derived from Proprietary Information, or any means of disclosing such Proprietary Information that the Parties may elect to use during the life of this Agreement.
3. Each Party acknowledges that the other Party's Proprietary Information is not generally available to the public and may contain valuable trade secrets.
4. Nothing in this Agreement may be construed as compelling a Party to enter into any further contractual relationships in the form of partnership, joint venture, teaming arrangement or any other contract or agreement whatsoever for the Purpose, or for any possible follow-on activities.
5. 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. The Parties hereby represent that the disclosure of Proprietary Information by and between themselves is not contrary to the laws and regulations of the Republic of South Africa.
6. The Offeror specifically agrees not to contact or initiate contact, or disclose any information of Denel at any time for any purpose, either directly or indirectly, with / to the customers of Denel or any officers, directors, shareholders, consultants, attorneys, employees, agents or other

affiliates of the customers of Denel, unless approval is specifically granted in written form by Denel on a case-by-case basis.

7. Any information or data in whatever form disclosed by a Party hereto to the other Party, and which is Proprietary Information, whether or not such information is designated as such by the Disclosing Party shall be subject to the terms and conditions of this Agreement.
8. The Disclosing Party shall maintain a Disclosure Register, updated from time to time, as additional disclosures are made, and ensure that the Receiving Party sign for the receipt of such disclosed information. Such Register shall contain security classifications as well any additional restrictions placed on the access, use and distribution of disclosed information. The Disclosing Party shall provide the Receiving Party with a copy of the Disclosure Register within 3 days after any updates of such due to further disclosure.
9. For the duration of this Agreement, the Receiving Party hereby covenants that, the Proprietary Information shall:
 - a. Be protected and kept in strict confidence by the Receiving Party, with the same degree of precaution and safeguards utilized in treating its confidential information of like importance, but in no case any less than reasonable care;
 - b. Be only disclosed to and used by those persons within the Receiving Party's organization who have a need to know, and solely for the purpose specified in this Agreement;
 - c. Not be used in whole or in part for any purpose, including commercial exploitation, other than the Purpose of this Agreement, without the prior written authorization 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 (b) above, which for the avoidance of doubt, precludes disclosure to any Party's parent company as well as any of its affiliates, including other divisions and/or subsidiaries of the said parent company, without having been specifically authorized in writing by the Disclosing Party;
 - e. Neither be copied, nor otherwise reproduced or duplicated in whole or in part where such copying, reproduction or duplication has not been specifically authorized in writing by the Disclosing Party.
10. Denel shall for the avoidance of doubt, be entitled to disclose Proprietary Information to the Government of the Republic of South Africa, and government agencies as well as any of its

affiliated companies, including other divisions and/or subsidiaries of Denel, to further the objectives/or purpose of this Agreement.

11. Any Proprietary Information and copies thereof disclosed by a Party to another Party shall indefinitely remain the property of the Disclosing Party. Any intellectual property resulting pursuant to this Agreement, whether based on intellectual property provided by Denel or resulting from contracted work effort, will remain the exclusive property of Denel indefinitely; unless otherwise agreed in writing.
12. Upon termination or expiration of this Agreement, or at such earlier time as it appears that the Proprietary Information is no longer required, each Party shall cease the use of Proprietary Information received from the other Party; and at its own expense, return to the other Party, the original and all copies of such Proprietary Information to the respective addresses mentioned in clause 12 within a reasonable time and certify in writing that all information received and copies of such has been returned, as well as all electronic copies removed from all its systems; or, if requested by the Disclosing Party, shall destroy or delete the originals and all copies of such Proprietary Information and certify the destruction of such in writing within thirty (30) days of the request thereto.
13. 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 its files; or
 - c. is acquired from a third party by a Party or its Affiliates independently who lawfully acquired such information without restriction and who had not previously obtained the Confidential Information directly or indirectly under a confidentiality obligation in favour of the Disclosing Party or its Affiliates; and
 - d. has been or is published without violation of this Agreement; or
 - e. is independently developed in good faith by the Receiving Party, as evidenced by written documentation in its files; or
 - f. is approved for release or use by written authorization of the Disclosing Party; or

- g. can be shown to have been lawfully in the possession of the Receiving Party or its Affiliates prior to its disclosure and which is not subject to an existing agreement between the Parties or any of its Affiliates;
- h. is required by law to be disclosed or released by the Receiving Party to satisfy an order of a Court of competent jurisdiction or to otherwise comply with the provisions of any law or regulation in force at the time or the requirements of any regulatory authority, provided that, in these circumstances, the Receiving Party shall advise the Disclosing Party prior to any such disclosure and permit the Disclosing Party to take whatever steps it deems necessary to protect its interests in this regard and provided further that the Receiving Party will afford the Disclosing Party a reasonable opportunity, if possible, to intervene in the proceedings, and disclose only that portion of the Confidential Information which it is legally required to so disclose; and the Receiving Party will use its reasonable endeavours to protect the confidentiality of such information to the widest extent lawfully possible in the circumstances (and the Receiving Party shall co-operate with the Disclosing Party if the Disclosing Party elects to contest any such disclosure);

14. With respect to any exchange of Proprietary Information which may occur pursuant to this Agreement, it is expressly understood and agreed that the following employees shall, on behalf of the Parties, be the exclusive individuals authorized to receive and/or transmit Proprietary Information under this Agreement:

a. Denel
 368 Selbourne Avenue
 Lyttelton
 Republic of South Africa
 Attention: _____
 Tel: +27 12 671 _____
 Telefax: +27 12 671 _____
 Email: _____

b. [.....]

Attention: _____
 Tel: _____
 Telefax: _____
 Email: _____

15. Any change in the address or of the nominee shall be effected by rendering written notice of such change to the other Party. Proprietary Information to be exchanged between the authorized

persons stated above shall be transmitted by post/courier; any written or printed document; electronic atmosphere; or by a different way to be preferred by the Parties during this Agreement.

16. Any Proprietary Information disclosed by the Parties under this Agreement which is Classified Information, i.e. information provided with a military security classification by the competent national military authorities, shall be identified by the Disclosing Party as Classified Information at the time of disclosure, and the disclosure, protection, use and handling of such information shall be in accordance with security procedures prescribed by the appropriate Government, which will be notified by the Disclosing Party to the Receiving Party.
17. It is expressly understood and agreed by the Parties that the disclosure and provision of Proprietary Information under this Agreement by a Party to another Party shall not be construed as granting to the Receiving Party 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. Disclosure of Proprietary Information shall not constitute any representation, warranty, assurance, guarantee or inducement by the Disclosing Party to anyone with respect to infringement of patent or other rights of others.
18. All information and/or data disclosed by a Party to another Party pursuant to this Agreement, and which is precisely designated as proprietary shall, subject to any right of any other owner, rest with the Disclosing Party.
19. The Disclosing Party shall not be liable for damages of any kind arising from or connected with the Receiving Party's use of or reliance on information disclosed pursuant to this Agreement.
20. Each Party shall be responsible for any breach of this Agreement by its employees, such remedies shall not be deemed to be exclusive, but shall be in addition to all other remedies available in law or in equity. Nothing contained in this Agreement shall be construed as precluding the Disclosing Party from seeking urgent relief, whether in the form of an interdict or otherwise, from any court of competent jurisdiction for the enforcement and/or protection of any of the Disclosing Party's rights hereunder.
21. The execution, existence of this Agreement shall be kept confidential. The rights and obligations of the Parties in terms of this Agreement shall not be assigned (except for the purpose of corporate reorganization, restructuring or merger) without the prior consent of both Parties. Such consent shall not be unreasonably withheld. In the case that an assignment is made as with prior consent of both Parties or a result of corporate reorganization, restructuring or merger, the assignee shall effectively undertake to comply with the provisions hereof as though it had been an original Party hereto.

22. This Agreement, including all rights and obligations of the Parties shall commence on the Effective Date and maybe terminated by either party on 30 days' written notice.
23. The termination of this Agreement shall not relieve the Receiving Party of complying with the obligations imposed by this Agreement with respect to the use and protection of the Proprietary Information received prior to the date of termination of this Agreement. Such obligations shall continue beyond any date of termination.
24. This Agreement shall be governed by and interpreted in accordance with the laws of the Republic of South Africa.
25. All disputes arising in connection with the interpretation and implementation of this Agreement, which cannot be amicably settled by the parties within fifteen (15) days of such dispute arising through negotiations in good faith or mediation, shall be finally settled by arbitration (including any appeal against the arbitrator's decision) by one or more arbitrator appointed in accordance with the Rules of Arbitration Foundation of South Africa (AFSA). The arbitration shall be held in Pretoria, Republic of South Africa, or any place the Parties may agree upon. If the Parties cannot agree on any arbitrator within a period of ten (10) days after the referral, the arbitrator will be appointed by the President of the AFSA. The arbitral procedure shall be conducted in the English language; the award shall be final and binding on the Parties; and judgment thereon may be entered in any court having jurisdiction over the Party against whom enforcement is sought; and application may be made to such court for judicial acceptance of the award and/or an order of enforcement as the case may be. Nothing contained in this clause shall be construed as preventing any Party, pending finalization of this dispute resolution process, from seeking interim relief on an urgent basis from any court of competent jurisdiction. This clause is a separate, divisible agreement from the rest of this Agreement, and must remain in effect even if the Agreement terminates, is nullified, or is cancelled for any reason or cause.
26. This Agreement can only be changed by a written amendment agreed upon by the Parties and signed by persons authorized to bind the Parties.
27. Failure at any time by one of the Parties to enforce any provision of this Agreement shall neither constitute a waiver of such provision nor prejudice its right to enforce such provision at any subsequent time. Waiver of any provision of this Agreement shall only be deemed to have been made if expressed in writing by the Party granting such waiver.
28. If any provision of this Agreement is or becomes void or unenforceable by force of law, such provision shall not affect the validity or enforceability of the remainder, and the Parties shall attempt to reform the Agreement appropriately in good faith.

29. The foregoing constitutes the entire agreement between the Parties with respect to the exchange and protection of Proprietary Information for the Purpose, and supersedes and cancels all prior representations, negotiations, commitments, undertakings and communications, whether oral or written; and acceptances, understandings and agreements between the Parties with respect to or in connection with any of the matters or things to which this Agreement applies or refers. The signature by either Party of a counterpart of this Agreement shall be as effective as if that Party had signed the same document as the other Party

30. The Effective Date of this Agreement shall be/...../201.....

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its duly authorized officer or representative, in two (2) identical copies in the English language.

Signed and agreed on behalf of at
..... on this day of,
by in his capacity as
.....

AS WITNESSES:

- 1.
- 2.

For and on behalf of:
(duly authorised thereto)

Signed and agreed on behalf of at
..... on this day of,
by in his capacity as
.....

AS WITNESSES:

- 1.
- 2.

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