

# COMMERCIAL IN CONFIDENCE

## CONFIDENTIALITY AGREEMENT

THIS AGREEMENT IS MADE BETWEEN:

**Selex ES S.p.A.**, a sole shareholder company under the co-ordination and supervision of Finmeccanica Societa' per azioni, having its registered office at Via Piemonte 60, 00187 Rome – Italy (hereinafter referred to as "SES")

AND

..... (hereinafter referred to as .....

Each of SES and [ .....] being referred to hereafter as a "Party", and collectively as "Parties".

WHEREAS

- A. (SUMMARY OF BACKGROUND / PROJECT NECESSITATING EXCHANGE OF INFORMATION)
- B. SES and ..... envisage that during the ensuing discussions and negotiations, it may occur that either Party discloses to the other certain of its Proprietary Information (as hereinafter defined) relating to ..... for the purposes of (to be tailored to the specific circumstances) .
- C. The Parties wish to protect such Proprietary Information in accordance with the provisions set out below.

NOW IT IS HEREBY AGREED AS FOLLOWS:

- (a) For the purposes of this Agreement the term "Proprietary Information" shall mean any technical or commercial information originally disclosed by one Party ("the Disclosing Party") to the other Party ("the Receiving Party") under this Agreement, whether in writing, orally, visually, or in any other format (including, but not limited to, graphic, electronic, pictures, audio, video), in the form of samples, software tools, software packages in source and/or object codes and any related information in whatever form, computer programs of any kind, models, specifications, drawings, designs, know-how or otherwise, provided that such information, if written, is clearly and conspicuously marked by the Disclosing Party as being proprietary or confidential and that if oral, visual or in other non-written form is designated as Proprietary Information at the time of disclosure and is confirmed by the Disclosing Party as such in writing within 30 (thirty) days of its being disclosed. All the protection and restrictions in this Agreement as to the use and disclosure of Proprietary Information shall apply during the said period of thirty days.

Proprietary Information shall also include any information which can be obtained by examination, testing or analysis of any hardware or material substance or any component part thereof provided by the Disclosing Party notwithstanding the fact that the requirements for marking and designation referred to above shall not have been fulfilled.

## COMMERCIAL IN CONFIDENCE

(b) The Receiving Party shall during the term of this Agreement and for a further period of 5 (five) years following the first to occur of the date of expiry or termination of this Agreement:

- (i) hold the Disclosing Party's Proprietary Information confidential to itself and restrict access thereto to such of its employees who need to know it for the purposes referred to in the Recitals, and
- (ii) not use Proprietary Information other than for the purposes referred to in the Recitals unless (and then only to the extent to which) a further use is specifically authorised in writing by the Disclosing Party, and
- (iii) not disclose Proprietary Information to any third party without the prior written consent of the Disclosing Party; such authorized disclosure is subject to the Receiving Party making aware the third party of the provisions of this Agreement prior to the disclosure and procuring that such third party is bound by obligations of confidentiality which are no less onerous than those contained in this Agreement, and
- (iv) not to copy reproduce or reduce to writing any part of such Proprietary Information except as may be reasonably necessary for the purpose referred to in the Recitals.

It is understood and agreed that SES shall on a strict need-to-know-basis and under the same obligations as set out hereby have the right to disclose this Agreement and the Proprietary Information to any of its parent company, subsidiaries (i.e. companies where SES owns more than 50% of shares or voting rights) or companies under the same control as SES.

(c) The obligations and restrictions provided in Clause (b) hereof shall not apply to information which the Receiving Party can prove:

- (i) to have been in the unrestricted possession of the Receiving Party at the time of disclosure hereunder, or
- (ii) to have been or become available to the public otherwise than by breach of this Agreement, or
- (iii) to have first been lawfully obtained from a third party, not a Party hereto, without notice of such restrictions as to use and disclosure, or
- (iv) to have been developed by the Receiving Party or for it, independently of any Proprietary Information.

If only a portion of the Proprietary Information falls under any of the above subsections, then only that portion of the Proprietary Information shall be excluded from the confidentiality obligations and use restrictions set out in this Agreement.

Furthermore, it shall not be a breach of this Agreement for the Receiving Party to disclose Proprietary Information in accordance with: the requirements of a law; an order of a court; in order to comply with the rules of a stock exchange or professional regulatory body; or to any other public authority requiring disclosure under a legally-binding rule. However, before the Receiving Party intends to disclose such Proprietary Information in accordance with this Clause, it shall – as far as it is legally permissible – inform the Disclosing Party immediately in writing about the disclosure requirements concerning the Proprietary Information in order to give to the Disclosing Party the opportunity to obtain a suitable injunction to protect itself or to take steps to dismiss the requirement to disclose

## COMMERCIAL IN CONFIDENCE

the Proprietary Information or to limit the scope of the disclosure. On disclosing the Proprietary Information according to this paragraph, the Receiving Party may only disclose the minimum amount of Proprietary Information which is necessary to comply with the relevant law or the relevant instructions. Proprietary Information so disclosed shall remain subject to all the restrictions and protections of this Agreement for all other purposes.

(d) For the purposes of this Agreement, "Classified Information" shall mean information, documents and material of all kinds which the Disclosing Party's national Government has given or caused to be given a security classification irrespective of whether the same is transmitted orally, electronically, in writing or by handing over.

Notwithstanding any provisions of this Agreement:

- (i) each Party hereto undertakes to follow such security procedures as are notified to it by the Disclosing Party as having been prescribed by or on behalf of its respective national Government with respect to:
  - (a) disclosure of any Classified Information to the other;
  - (b) receipt of Classified Information from the other;
  - (c) protection, use and handling of Classified Information received from the other,
- (ii) any Classified Information disclosed by one Party hereto shall whatever the method of disclosure be identified by the Disclosing Party as Classified Information at the time of disclosure.
- (iii) the provisions of this Clause (d) are to remain in effect notwithstanding any termination by expiration of time or otherwise of this Agreement.

(e) The obligation to keep Proprietary Information confidential to itself will be satisfied if the Receiving Party utilises in respect thereof the same controls as it employs to avoid disclosure, publication and dissemination of its own Proprietary Information of a similar nature, provided not less than a reasonable standard of care is used.

(f) Each Party is responsible for its own costs in negotiating this Agreement and performing its obligations hereunder. The disclosure of Proprietary Information under this Agreement by the Disclosing Party to the Receiving Party shall not be construed as granting to the Receiving Party any right in or title to, whether express or implied by licence or otherwise, on the matters, inventions or discoveries to which such Proprietary Information pertains, or as granting any trademark or trade secret right. The property of all information and/or data disclosed by the Disclosing Party to the Receiving Party, pursuant to this Agreement, shall remain with the Disclosing Party or with any other owner.

(g) The effective date of this Agreement shall be the date on which it is executed by both Parties ("Effective Date"). This Agreement shall remain in force for 12 (twelve) months from the Effective Date and shall then automatically terminate unless renewed by mutual consent in writing. Notwithstanding the foregoing, this Agreement may be terminated earlier by either Party by giving at least 30 (thirty) days notice in writing to the other Party of its decision to do so.

(h) On termination of this Agreement for any reason the Receiving Party shall retain no Proprietary Information disclosed to it under this Agreement and shall upon the request of the Disclosing Party either return to the Disclosing Party or destroy all Proprietary Information which is in a tangible form and is in the possession of the Receiving Party pursuant to this Agreement, together with all copies thereof.

(i) No Party shall assign or transfer its rights and/or obligations pursuant to this Agreement without the prior written consent of the other Party. The Parties agree

## COMMERCIAL IN CONFIDENCE

that any reorganization, merger or analogous proceeding affecting either Party and entailing succession by operation of law, as a result of which the legal successor assumes all of the rights and obligations under this Agreement, will not be considered as transfer and/or assignment of this Agreement.

- (j) Subject to Clause (d) above this Agreement shall apply in lieu of and notwithstanding the terms or conditions in any specific legend or restrictive statement associated with any information exchanged hereunder and the duties of the Parties shall be determined exclusively by the terms and conditions of this Agreement.
- (k) This Agreement is intended to facilitate only the exchange of Proprietary Information and is not intended to be, and shall not be construed to create a teaming agreement, joint venture association, partnership, or other business organisation or agency arrangement and no Party shall have the authority to bind the other without the other Party's separate prior written agreement thereof. No Party hereto has an obligation to supply information hereunder and no Party has an obligation hereunder to enter into any contract with the other Party. No Party has an obligation under this Agreement to offer for sale products using or incorporating the Proprietary Information.
- (l) The Notice Address and primary but nonexclusive points of contacts for the exchange of Proprietary Information subject to the protection of this Agreement are set forth as below:

Selex ES S.p.A.

For attention of:  
Address:  
Email:  
Telephone No.:

XXXXXXXXXXXXXXXX

For attention of:  
Address: Email:  
Telephone No.:

Any Party may change its address and point of contact from time to time by written notice to the other Party.

- (m) Proprietary Information is disclosed on a "as is" basis. No warranty, including the implied warranties of merchantability and fitness for a particular purpose, is made with respect to a Proprietary Information or infringement of any third party rights. The Disclosing Party shall not be liable for any damages arising out of the Receiving Party's use of Proprietary Information.
- (n) For the purposes of this Agreement "Personal Information" means any information or opinion about an identified or reasonably identifiable individual and the contact detail or other sensitive data regarding any individual, in all cases where obtained by the Receiving Party from the Disclosing Party in connection with this Agreement. Such Receiving Party must handle the Personal Information in accordance with the applicable privacy statutes and regulations including but without limitation to the Italian D. Lgs no. 196/2003 and subsequent

## COMMERCIAL IN CONFIDENCE

modifications and only to perform its obligations under this Agreement. Each Party is responsible for ensuring that any person it authorises to access that Personal Information meets the requirements of this Clause. The provisions of this Clause (n) are to remain in effect notwithstanding any termination by expiration of time or otherwise of this Agreement.

- (o) This Agreement contains the complete and entire understanding between the Parties on the subject matter hereof and supersedes all discussions, proposals, understandings or agreements, oral or written, relating to the subject matter hereof provided that nothing in this Clause shall exclude any liability for fraudulent misrepresentation.
- (p) No exercise, or failure to exercise, or delay in exercising any right, power or remedy vested in either Party under or pursuant hereto shall constitute a waiver by that Party of that or any other right, power or remedy.
- (q) This Agreement shall be governed by and the rights and obligations of the Parties hereto shall be construed in all respects in accordance with the substantive Laws of Italy, except for its conflict of laws provisions. Irrespective of the foregoing each Party shall remain bound by the provisions of its own national laws and regulations with respect to the transfer or use of Classified Information or information whose export is subject to an export license.
- (r) All disputes between the Parties, in connection with or arising out of the existence, validity, construction, performance and termination of this Agreement (or any terms thereof), which the Parties are unable to resolve among themselves, shall be finally settled by arbitration. The arbitration shall be held in Rome (Italy), in accordance with the Rules of Conciliation and Arbitration of the International Chamber of Commerce of Paris (ICC), by three arbitrators appointed in accordance with said rules. The language of the arbitration shall be English. The Parties agree that damages would not be a sufficient remedy for any breach of this Agreement and that each Party may have recourse to any Court of competent jurisdiction to claim for other remedies available at law or equity, including but not limited to injunctive relief and specific performance.

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be signed by their respective duly authorised representatives.

Signed for and on behalf of  
**Selex ES S.p.A.**

.....  
Name .....

Position .....

Date: .....

Signed for and on behalf of

.....  
Name .....

Position .....

Date: .....