(To be printed on Rs 100/- Stamp Paper)

NON DISCLOSURE AGREEMENT

This Agreement is entered on ___ Day of _____Month _____Year into by and between:

BrahMos Aerospace, a company organized and existing under the laws of India with registered office at 16, Cariappa Marg., Kirby Place, Delhi Cantt.-110 010 India, (Hereinafter referred to as "**First Party**") on the one part,

And

_____. a company organised and existing under _____ law, whose registered office is at _____, ("**Second Party**") hereinafter referred to as "**Receiving Party**" which expression shall unless it be repugnant to or inconsistent with subject or context thereof, include and be deemed to include their Heirs, Executers, Successors or Administrators and permitted assigns on the other part.

Hereinafter collectively referred to as the "Parties" or individually as the "Party"

PREAMBLE

I. **WHEREAS,** BrahMos Aerospace Private Limited, a joint venture between India's Defence Research and Development Organisation (DRDO) and Russia's NPO Mashinostroyenia, is the manufacturer of BrahMos supersonic cruise missile that can be launched from ships, submarines, aircraft or land

II. **WHEREAS,** First party and Receiving Party are interested in sharing technical details for _____ _____.

III. **WHEREAS,** First Party and Receiving Party are willing to share technical and/or commercial details for ascertaining feasibility of _____ _____ _____.

IV. **WHEREAS,** First Party possess certain sensitive and confidential information and desires to disclose it to the Receiving Party for fulfilling the purpose defined in Serial II and III of Preamble

V. **WHEREAS,** from time to time and for these purposes, it may be desirable or necessary for the First Party hereto to disclose to each other certain technical or business information of a proprietary or confidential nature, hereinafter referred to as "Confidential Information", and

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

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Definition

"The Confidential Information" means any information, which shall include but not limited to design, fabrication and assemble drawings, know-how processes, product specifications, raw materials, product samples, inventions, concepts, business plans, proposal plans, scientific and industrial information, capabilities, experience, developments, production procedures, facilities layout, calculations, technical specifications, test results, design procedures, reports, findings, trade and business secrets, financial data and any other technical and/or commercial information or data, disclosed by first Party to the receiving party under this agreement, directly or indirectly and in any form whatsoever (including, but not limited to disclosures made in writing, oral or in the form of samples, models, computer programmes, drawings or other instruments).

1.1 Such confidential Information shall also include but shall not be limited to:

1.1.1 information disclosed by the First Party in writing marked as confidential or Proprietary at the time of disclosure;

1.1.2 information disclosed by the First Party orally or visually which is slated to be confidential or Proprietary at the time of disclosure;

1.1.3 information disclosed in any other manner is designated in writing as Confidential or Proprietary Information at the time of disclosure;

1.1.4 Notwithstanding sub-clauses 1.1.1, 1.1.2 and 1.1.3 of this definition, any information whose nature makes it obvious that it is confidential. Such information shall include business plans, proposal plans, scientific and industrial information, capabilities, experience, developments, production procedures, facilities layout, calculations, technical specifications, test results, design procedures, reports, findings, trade and business secrets, inventions,

unpublished knowhow, financial data and any other information that has been so identified by the disclosing party.

1.2 Such Confidential Information shall not include information which the Receiving Party can prove that:

1.2.1 is, at the time of disclosure, publicly known; or

1.2.2 becomes at a later date, publicly available otherwise than a wrongful act or negligence or breach of this Agreement of by the Receiving Party; or

1.2.3 the Receiving Party can demonstrate by its written records, was in possession, or known to the Receiving Party, before receipt under this Agreement, and which was not previously acquired under an obligation of confidentiality; or

1.2.4 is legitimately obtained at any time by the Receiving Party from a third Party without restrictions in respect of disclosure or use; or

1.2.5 the Receiving Party can demonstrate to the satisfaction of the Disclosing party, has been developed independently of its obligations under this Agreement and without access to the Confidential Information.

2. Identification

When Confidential information is disclosed in writing or other tangible form, the information shall be marked "CONFIDENTIAL" or with similar legend on each page containing Confidential information. When Confidential information is disclosed orally, visually or in any other intangible form, such information shall be identified as confidential at the time of disclosure, subsequently summarized and confirmed in writing within Thirty (30) days from the initial disclosure, referring the date of disclosure.

3. Standard of Care

The Receiving Party shall protect the confidential information disclosed by the First Party with appropriate care.

a. Receiving Party shall communicate to First Party in writing the list of nominated persons for receiving confidential information.

b. Confidential information should not be communicated through unsecured channels. Confidential information should be exchanged preferably through signed letters and by hand.

c. When confidential information is received by Receiving Party, the Receiving Party should acknowledge the receipt of confidential information.

d. Receiving Party should not discuss the confidential information disclosed by First Party with any Third Party, within Government Organizations or outside Government Organizations without the

prior written approval of First Party. The Firm agrees to promptly notify First Party of any misuse/misappropriation/loss/comprise of the confidential information.

4. Either Party's failure to enforce any provision, right or remedy under this agreement shall not constitute a waiver of such provision, right or remedy.

5. This Agreement will be construed in, interpreted and applied to accordance with the laws of India.

6. <u>Confidentiality Period</u>

6.1 During the validity of this agreement and for a period of ten (10) years from the expiry of this Agreement as per article 9 (or such other period as may be agreed) the following shall apply:

6.1.1 The receiving Party shall keep the Confidential Information in strict confidence using the same degree of precaution and safeguards as it uses to protect its own Confidential Information of like importance, but in no case any less than reasonable care;

6.1.2 The receiving Party undertakes to disclose Confidential Information only on a need to know basis to its employees who are directly involved in the scope of this Agreement and then only in the understanding that such persons are made aware of and undertake to observe the provisions of this Agreement. The receiving Party shall ensure that its personnel adhere to agreement even beyond the date at which a contractual relationship between employer and employee cease to exist.

Furthermore, and not in limitation of the foregoing, the receiving Party shall not disclose the "Confidential Information" to any of its agents or consultants without the prior written consent of the issuing Party and the agent's and/or consultant's agreement to enter into a similar Confidentiality Agreement enforceable directly by the issuing party.

6.1.3 The receiving Party undertakes not to use such Confidential Information otherwise than for purposes as described in the Preamble above unless such use is specifically authorised in writing by the disclosing Party.

6.1.4 The receiving Party undertakes not to copy or reduce Confidential Information to writing except as may be strictly necessary for purposes as described in the Preamble above and to return to the disclosing Party on demand all copies of Confidential Information as sent by the disclosing Party to the receiving Party, and to destroy all notes and any other written reports or documents which may have been made by the receiving Party to the extent that they contain any part of or reference to the Confidential Information in whole or part, except as authorised in writing by the disclosing Party, or as is strictly necessary to complete any outstanding obligations relating to the purposes of this Agreement where after such Confidential Information shall be returned or destroyed as aforesaid.

6.1.5 Notwithstanding clauses 6.1.1 to 6.1.4, the receiving Party may disclose information which is mandatory required to be disclosed pursuant to any order arising from an applicable legal requirement; or legal process issued by any court; or any competent government authority of rules; or regulations of any relevant regulatory body, only to the extent of such order; provided, however, prior notice detailing the information to be provided, is given to the disclosing party before any such disclosure is made

6.2 Nothing herein shall be deemed to replace or prejudice any governmental security classification reference on any part of the Proprietary Information, and the receiving Party undertakes to respect and observe any such classification and to treat the same with such degree of care and security as is required by the relevant governmental authority in the country of the disclosing Party.

7 Return of Materials

The Receiving Party shall return to the First Party, or at the discretion of the First Party certify the destruction of all copies of the First Party's confidential information upon written request of First Party.

8 No License

Nothing herein constitutes a license or other transfer of rights in respect of either Party's interest in any Confidential information disclosed pursuant to this Agreement.

9. Term

The Term of this agreement is Five (5) years from the effective Date, however, those Sections 6, 8 and 11 hereof shall survive even after expiration or termination hereof.

10. Assignment, Modification and Waiver

No assignment, modification, or waiver of any Term of this Agreement shall be effective unless set forth in writing and signed by an Authorized Representative of each Party. No failure to enforce any provision of this Agreement shall be construed as waiver.

11. Dispute Resolution

Difference of opinion, if any, arising during the period of this Agreement, concerning the execution of the responsibilities will be settled on the basis of mutual consultation by the signatories or their designated nominees. The parties will make best possible efforts to resolve the dispute and in case of their failure to do so and reconciling the dispute mutually, the same shall be referred for Arbitration

12 Governing Law and Arbitration

Any question, dispute or difference arising under the Contract (except as to any matter, the decision of which is specifically provided for) shall be referred to arbitration by three (3) arbitrators in accordance with the Arbitration Rules. The Award of the Arbitrator shall be final and

binding on both the Parties. The Arbitrator shall be entitled to extend time of award by the consent of the Parties from time to time. The venue of Arbitration shall be New Delhi or any other Place as may be decided by the Arbitrator and the expenses of the Arbitration shall be at the discretion of the Arbitrator. Subject as aforesaid, the Arbitration and Conciliation Act 1996 and the Rules there under and any statuary modification thereof for the time being in force shall be deemed to apply to the Arbitration proceedings under this condition. The language to be used in the arbitral proceedings will be the English language, the parties agree that the arbitration award shall be final and binding upon the parties.

13. Severability

If any provision of this Agreement should be held to be invalid in any way or unenforceable it shall be severed and the remaining provisions shall not in any way be affected or impaired and this Agreement shall be construed so as to most nearly give effect to the intent of the Parties as it was originally executed.

14. Reciprocity

The rights and obligations set out in this Agreement shall apply equally to both Parties to the extent that the Confidential Information is disclosed by one to another.

15. Property Rights

This Agreement shall not be construed as granting expressly or impliedly any rights under know-how, patents, copyright and any other form of intellectual property rights belonging to the disclosing Party in respect of Confidential Information, the ownership of which shall remain vested in the disclosing Party at all times.

16. Entire Agreement

This Agreement constitutes the entire Agreement between the Parties with respect to the matters covered by this Agreement, supersedes all prior agreements and understandings with respect thereof, and may only be amended in writing signed by both Parties.

This Agreement shall be binding and inure to the benefit of the undersigned Parties, their Successors and Assigns.

17. Publicity

No publicity nor public announcement concerning the existence or content of this Agreement, whether by sales literature, press, radio, TV or any other media, shall be sought or permitted by either Party without the prior written consent of the other.

18. Miscellaneous

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 separate prior written agreement thereof.

Nothing in this Agreement shall be considered as an obligation to either Party to (i) do or not to do anything or (ii) disclose information, or as a warranty of the accuracy or completeness of the information provided to the other Party.

19. Communications

In addition to the signatories of this Agreement, it is hereby expressly agreed that the persons identified herein below shall be the sole persons authorised to transmit and/or receive Confidential Information on behalf of the Parties:

First Party: BrahMos	**Second Party / Receiving Party**
BrahMos Aerospace Private Limited	_____
16. Cariappa Marg. Kirby Place	_____
Delhi Cantt. 110 010 (INDIA)	_____
	_____

Any modifications in the name or address of the above individual by one Party shall be notified to the other in writing.

In WITNESS WHEREOF, the Parties hereto executed this Agreement, two originals, by their duly authorised officers or representatives.

Signed for and on behalf of:

First Party	**Second Party / Receiving Party**
BRAHMOS AEROSPACE	
By:	
Name: _____	Name: _____
Title: _____	Title: _____
Date:_____	Date:_____
By:	By:
Name:	Name:
Title:	Title:
Date:	Date: