**MUTUAL NONDISCLOSURE AGREEMENT (“NDA”)**

Federal Equipment Co. and its parent company dba Fairbanks Morse Defense, including its divisions, affiliates and subsidiaries, with principal offices at 5298 River Road, Cincinnati, OH 45233 and       located at      , individually referred to as a “Party” and collectively as the “Parties”, enter into this NDA with an Effective Date of      . The Parties agree for themselves, their successors and assigns as follows:

1. **Purpose.** Either Party may disclose certain confidential and proprietary information about its products, services, business strategies, and related matters to the other Party for the other Party’s purposes in evaluating a possible business relationship between the Parties (“Purpose”). A Party will be considered to be a "Discloser" with respect to information that it discloses and a "Recipient" with respect to information that it receives. No Party is willing to disclose any such confidential and proprietary information to the other without the restrictions on use and disclosure contained in this NDA.
2. **Definition of Confidential Information.** “**Confidential Information**” means: (a) any and all business or technical information of Discloser or any parent, subsidiary, or affiliate of Discloser, whether disclosed orally or in writing and in whatever form or medium that is not generally known to the public including, without limitation, business plans and strategies; customer, employee, distributor, supplier, agent, and vendor names, identities, data, lists, contracts, and agreements; algorithms; drawings; designs; documents; engineering information; financial analysis and information; forecasts; formulas; samples; raw materials; hardware configuration information; know-how; ideas; inventions; market information; marketing plans; processes; products (including, without limitation, geometry and composition of materials); product plans; services; research; testing methods, capabilities, and results; project management strategies; equipment; shop procedures; production and materials handling procedures; improvements; methods; techniques; specifications; software; programs; source and object code; IT systems; IT strategies; web design, functionality, and data; and intellectual property (including, without limitation, patents, copyrights, trade and service marks and trade secrets) (collectively, the “*Disclosed Materials*”); (b) any information otherwise obtained, directly or indirectly, by Recipient through inspection, review, or analysis of the Disclosed Materials and/or while visiting the premises of Discloser or any parent, subsidiary or affiliate of Discloser; (c) any confidential information of a third party that is in the possession of Discloser or any parent, subsidiary, or affiliate of Discloser, and is disclosed to Recipient; and (d) Personally Identifiable Information including any data or information relating to an identified and/or directly or indirectly identifiable natural person, including but not limited to: name, address, mobile telephone number, e-mail address, social security number (or foreign country equivalent) or driver’s license number.
3. **Limitations on Disclosure and Use of Confidential Information.** Recipient agrees that it will use at least the same degree of care in protecting the confidentiality of Discloser's Confidential Information that it uses to protect its own confidential information of like importance but in no event less than a commercially reasonable degree of care. In addition, Recipient agrees that it shall not use the Confidential Information for any reason except with respect to the Purpose and shall disclose Confidential Information only to its employees, agents, and representatives who need to know the Confidential Information to further the Purpose.
4. **Exclusions.** This NDA imposes no obligation upon a Recipient with respect to Confidential Information which: (a) was in the Recipient’s possession before receipt from the Discloser (except for Confidential Information previously disclosed to Recipient by Discloser); (b) is or becomes a matter of public knowledge through no fault of the Recipient; (c) is rightfully received by the Recipient from a rightfully possessing third party without a duty of confidentiality; (d) is disclosed by the Recipient with the Discloser's prior written approval in accordance with that written approval; or (e) in accordance with a subpoena or other valid judicial or government order, and Recipient shall, if legally permitted to do so, give Discloser prompt notice of that fact, including in its notice the legal basis for the required disclosure and the nature of the Confidential Information which must be disclosed. Recipient shall cooperate fully with Discloser in obtaining a protective order or other appropriate protection relating to the disclosure and subsequent use of the Confidential Information. Recipient shall disclose only that portion of the Confidential Information that is legally required to be disclosed.
5. **Retained Rights.** All Confidential Information is and shall remain the sole and exclusive property of the Discloser, and neither Party acquires any license, intellectual property rights, or legal or equitable interest in the other Party's Confidential Information.
6. **No Warranty.** All Confidential Information is provided "AS IS," and neither Party makes any warranty regarding the accuracy, appropriateness, or reliability of such information. The entire risk arising out of the use of the Confidential Information remains with the Recipient.
7. **Discovery of Unauthorized Use.** The Recipient shall notify the Discloser immediately upon discovery of any unauthorized use or disclosure of Confidential Information, or any other breach of this NDA by the Recipient, or its employees, agents, or representatives, or caused by any of them, and will cooperate with the Discloser in every reasonable way to help the Discloser regain possession of the Confidential Information and prevent further unauthorized use or disclosure.
8. **Enforcement.**  Each Recipient acknowledges that Discloser would have no adequate remedy at law should Recipient breach its obligations under this NDA. Therefore, Recipient agrees that Discloser shall be entitled to pursue enforcement of its rights under this NDA in case of any breach or threatened breach by obtaining appropriate equitable relief including a temporary restraining order and an injunction. Discloser’s delay in exercising or failure to exercise any right under this NDA shall not be deemed to be a waiver of that right or of the right to assert a claim with respect to any future breach of this NDA.
9. **Import/Export Compliance.** Each Party represents that it will comply with all applicable export and import laws and regulations during performance of this NDA, including but not limited to, the U.S. Arms Export Control Act, as amended (22 U.S.C. §§ 2751-2799), the International Traffic in Arms Regulations, as amended (22 C.F.R. Part 120 et seq.), the Export Administration Act, as amended, (50 U.S.C. §§ 2401-2420), and the U.S. Export Administration Regulations, as amended (15 C.F.R. § 730 et seq.). The Parties shall not export, disclose, furnish or otherwise provide any article, technical data, technology, defense service, or technical assistance of the other Party to any foreign person or entity, whether within the U.S. or abroad, without obtaining, in advance, (a) appropriate U.S. government export authorization when required, and (b) written approval from the other Party.
10. **Expiration.** Unless extended by written mutual agreement, this NDA shall automatically terminate five (5) years after the Effective Date. Recipient’s obligations with respect to disclosed Confidential Information shall continue for a period of five (5) years from the termination of this NDA. Notwithstanding anything to the contrary, the nondisclosure obligations and restrictions on use with respect to any Confidential Information that constitutes a trade secret shall continue in effect so long as the Confidential Information remains a trade secret under applicable law. Upon expiration and at the Discloser’s request, Recipient shall either return or destroy the Confidential Information and all copies as well as all documents produced containing the Confidential Information. However, Recipient shall not be required to return or destroy any copies that were created in the ordinary course of business and retained in Recipient’s computer system for archival backup purposes.
11. **Miscellaneous.**

**11.1 Governing Law.** This NDA is deemed to be made under and shall be construed and enforced according to the laws of the State of Wisconsin.

**11.2 Severability.** Should any part of this NDA be rendered or declared invalid by a court of competent jurisdiction or new legislation, such invalidation of such part or portion of this NDA should not invalidate the remaining portions thereof, and they shall remain in full force and effect.

**11.3 Counterparts.** This NDA may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

**11.4 Entire Agreement.** This Agreement sets forth the entire understanding between the parties with respect to the subject matter of this Agreement, supersedes all earlier oral or written agreements, and may not be modified or supplemented except in writing signed by both parties.

IN WITNESS WHEREOF, the Parties’ authorized representatives have signed this NDA below:

On behalf of Federal Equipment Co.,

 Signature of Duly Authorized Representative Date

 Printed Name/Title

On behalf of      :

 Signature of Duly Authorized Representative Date

 Printed Name/Title