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**United States of America
and
South Africa**

Agreement between the Government of the United States of America and the Government of the Republic of South Africa concerning cooperation on defense trade controls. Pretoria, 24 January 1997

Entry into force: *24 January 1997 by signature, in accordance with article III*

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**États-Unis d'Amérique
et
Afrique du Sud**

Accord entre le Gouvernement des États-Unis d'Amérique et le Gouvernement de la République sud-africaine en ce qui concerne la coopération relative au contrôle du commerce en matière de défense. Pretoria, 24 janvier 1997

Entrée en vigueur : *24 janvier 1997 par signature, conformément à l'article III*

Texte authentique : *anglais*

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[ENGLISH TEXT – TEXTE ANGLAIS]

**AGREEMENT BETWEEN
THE GOVERNMENT OF THE UNITED STATES OF AMERICA
AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA
CONCERNING COOPERATION ON DEFENSE TRADE CONTROLS**

THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA (HEREINAFTER REFERRED TO AS THE "PARTIES"),

SHARING AN INTEREST IN NORMALIZING DEFENSE TRADE BETWEEN THE TWO COUNTRIES, ON THE BASIS OF MUTUAL RESPECT AND MUTUAL BENEFIT;

RECOGNIZING THAT FUNDAMENTAL CHANGES IN THE POLITICAL AND LEGAL REGIMES IN SOUTH AFRICA MAKE THIS A UNIQUE CASE;

ACKNOWLEDGING THE VALUE OF EXCHANGING RELEVANT EXPERIENCE AND STRENGTHENING TECHNICAL COOPERATION ON DEFENSE TRADE CONTROLS; AND

RECALLING THE DECISION OF THE PARTIES TO NEGOTIATE A SOUTH AFRICAN DEFENSE INDUSTRY COMPLIANCE PROGRAM MUTUALLY AGREEABLE TO THE PARTIES;

HAVE AGREED AS FOLLOWS:

ARTICLE I

-- (A) THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA, AS THE SOLE SHAREHOLDER OF THE ARMAMENTS CORPORATION OF SOUTH AFRICA ("ARMSCOR") KENTRON (PTY) LTD. ("KENTRON") AND DENEL (PTY) LTD ("DENEL") SHALL ENSURE THAT ARMSCOR, KENTRON AND DENEL, AND ANY OF THEIR OPERATING DIVISIONS, SUBSIDIARIES, SUCCESSORS OR ASSIGNEES (REFERRED TO COLLECTIVELY HEREINAFTER AS THE "COMPANIES"), ESTABLISH AN INTERNAL COMPLIANCE PROGRAM REGARDING THE USE OR TRANSFER AFTER THE DATE THAT THIS AGREEMENT ENTERS INTO FORCE OF UNITED STATES ORIGIN DEFENSE ARTICLES, SERVICES AND TECHNICAL DATA THAT HAVE BEEN OR MAY IN THE FUTURE

BE EXPORTED OR OTHERWISE TRANSFERRED TO THE COMPANIES (THE "PROGRAM") AND THAT IS MUTUALLY ACCEPTABLE TO THE PARTIES.

-- (B) THE PROGRAM SHALL BE ADMINISTERED BY THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA WITH PROVISIONS FOR FULL TRANSPARENCY AND VERIFIABILITY TO ENABLE THE GOVERNMENT OF THE UNITED STATES TO DETERMINE TO ITS SATISFACTION THAT THE PROGRAM IS BEING FULLY IMPLEMENTED. THE PROGRAM SHALL CONTAIN PROVISIONS FOR:

-- (1) PREPARATION OF A WRITTEN MANUAL THAT ADDRESSES THE HANDLING OF UNITED STATES-ORIGIN DEFENSE ARTICLES, SERVICES OR TECHNICAL DATA, AND THAT REQUIRES ALL EMPLOYEES OF EACH COMPANY TO FOLLOW THE COMPANY'S COMPLIANCE PROCEDURES;

-- (2) A TRANSPARENT AND VERIFIABLE PROCESS FOR ASSESSING THE PERFORMANCE OF EACH COMPANY IN IMPLEMENTING THE PROGRAM, WHICH SHALL INCLUDE:

-- (A) PROVISIONS FOR THE COMPANY TO SHARE, UPON REQUEST OF EITHER PARTY, ON TERMS MUTUALLY ACCEPTABLE TO THE PARTIES, APPROPRIATE RECORDS CONCERNING DEFENSE ARTICLES, SERVICES OR TECHNOLOGY OF UNITED STATES ORIGIN; AND

-- (B) PROVISIONS FOR ARRANGING AND FACILITATING, BY REQUEST OF EITHER PARTY, ON TERMS MUTUALLY ACCEPTABLE TO THE PARTIES, VISITS BY OFFICIALS OF THAT PARTY TO THE COMPANY;

-- AND THE PROVISIONS DESCRIBED IN SUBPARAGRAPHS (A) AND (B) SHALL REMAIN IN EFFECT FOR A PERIOD OF FIVE YEARS, EXCEPT THAT IT IS THE PRESENT INTENTION OF THE PARTIES UPON SATISFACTORY IMPLEMENTATION OF THE PROGRAM TO EXCHANGE LETTERS TO TERMINATE SUCH PROVISIONS AT THE END OF A PERIOD OF THREE YEARS; AND

-- (3) APPOINTMENT BY THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA OF AN IMPARTIAL AND INDEPENDENT OMBUDSMAN, WHO SHALL BE A CITIZEN OF THE REPUBLIC OF SOUTH AFRICA, TO

MONITOR THE PERFORMANCE OF THE COMPANY TO ENSURE THAT THE PROGRAM IS BEING FULLY IMPLEMENTED, AND TO MAKE REPORTS AT REGULAR INTERVALS, WHICH REPORTS SHALL BE MADE AVAILABLE TO THE PARTIES.

ARTICLE II

-- UPON THE ESTABLISHMENT OF A PROGRAM IN ACCORDANCE WITH THIS AGREEMENT, INCLUDING THE COMPLETION OF THE MANUAL DESCRIBED IN ARTICLE I(B)(1), THAT IS MUTUALLY SATISFACTORY TO THE PARTIES, AND THE ENTRY OF A PLEA OF NOLO CONTENDERE BY ARMSCOR AND KENTRON IN UNITED STATES V. ARMSCOR AND KENTRON (THE "PLEA OF NOLO CONTENDERE"), THE FOLLOWING SHALL APPLY:

-- (A) ARMSCOR AND KENTRON EACH SHALL MAKE AVAILABLE AN AMOUNT EQUAL TO FIFTY PERCENT OF THE FINE IMPOSED AGAINST EACH ENTITY AS A RESULT OF THE ENTRY OF THE PLEA OF NOLO CONTENDERE FOR A PROGRAM TO BE ESTABLISHED AND ADMINISTERED BY THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA TO SUPPORT THE EFFECTIVE IMPLEMENTATION OF THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA'S NATIONAL EXPORT CONTROL REGIME.

-- (B) (1) THE UNITED STATES DEPARTMENT OF STATE SHALL RESCIND THE POLICY DESCRIBED IN PUBLIC NOTICE 2027, PUBLISHED IN THE FEDERAL REGISTER ON JUNE 30, 1994 (59 FR 33811), REGARDING DENIAL OF EXPORT LICENSE APPLICATIONS AND OTHER REQUESTS FOR APPROVAL UNDER THE ARMS EXPORT CONTROL ACT WITH RESPECT TO THE COMPANIES COVERED BY THE PROGRAM; AND

-- (2) WITH RESPECT TO VIOLATIONS AS TO WHICH THE PLEA OF NOLO CONTENDERE HAS BEEN ENTERED-

-- (A) THE UNITED STATES DEPARTMENT OF STATE SHALL SUSPEND DEBARMENT UNDER THE ARMS EXPORT CONTROL ACT OF COMPANIES COVERED BY THE PROGRAM; AND

-- (B) THE UNITED STATES DEPARTMENT OF COMMERCE SHALL SUSPEND INVOKING ITS AUTHORITY TO DENY COMPANIES COV-

REPEALED BY THE PROGRAM EXPORT PRIVILEGES UNDER SECTION 11(H)
OF THE EXPORT ADMINISTRATION ACT.

-- (C) IF IT IS DETERMINED THAT THE PROGRAM IS NOT BEING FULLY ADHERED TO UNDER ARTICLE I, OR THAT THIS AGREEMENT IS NOT OTHERWISE BEING COMPLIED WITH, THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA SHALL ENSURE THAT THE COMPANIES SHALL PAY CIVIL FINES IN THE AMOUNTS SPECIFIED IN PARAGRAPH (A) TO THE UNITED STATES DEPARTMENT OF STATE, AND THE SUSPENSIONS REFERRED TO IN PARAGRAPH (B) (2) MAY BE LIFTED.

ARTICLE III

-- THIS AGREEMENT IS NOT INTENDED TO CREATE, NOR DOES IT CREATE, ANY RIGHTS FOR THE COMPANIES OR ANY OTHER THIRD PARTIES, INCLUDING ANY RIGHTS TO ADMINISTRATIVE OR JUDICIAL REVIEW, ENFORCEABLE AGAINST EITHER OF THE PARTIES TO THIS AGREEMENT.

-- THIS AGREEMENT SHALL ENTER INTO FORCE UPON SIGNATURE.

DONE THIS 24th OF JANUARY, 1997, IN DUPLICATE.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

Ambassador James Joseph

FOR THE REPUBLIC OF SOUTH AFRICA:

Deputy Minister Aziz Pahad