

## **AGREEMENT**

The United States Attorney's Offices for the Central District of California ("CDCA") and the Eastern District of Virginia ("EDVA") (hereinafter collectively referred to as "the USAOs"), and The Boeing Company ("Boeing"), by its Senior Vice President – Law, pursuant to authority granted by its Board of Directors, hereby enter into this Agreement (the "Agreement"). This Agreement is part of a comprehensive resolution of civil and criminal matters relating to the subject matters defined in paragraphs 1 and 2 of this Agreement. This Agreement shall have force and effect only upon the occurrence of both: (a) execution of this Agreement by the USAOs and Boeing; and (b) execution of a Civil Settlement Agreement and Release, in the form attached hereto as Appendix C, by the Department of Justice and Boeing.

## **Definitions**

1. The "EELV Matter" is defined to include all matters relating to the alleged possession, transfer, use, and concealment of, and other conduct with respect to, another company's documents and information, whether or not proprietary or trade secret and whether or not in written form, and whether or not constituting "competition sensitive" or "source selection" information as defined in 41 U.S.C. § 423, and the disclosure or nondisclosure of such conduct, in connection with Boeing's participation: (a) from 1992 through 2003 in the United States Air Force ("USAF") MLV III program; (b) from 1995 through 2003 in the USAF EELV procurement process, awards and restructurings; (c) from 1999 through 2003 in the National Aeronautic and Space Administration ("NASA") Launch Services ("NLS") procurement process, including the NLS 19-pack procurement; and (d) from 1995 through 2003 in the Exoatmospheric Kill Vehicle procurement. This includes but is not limited to all conduct and events during the respective time periods relating to (a) the alleged possession of, transfer of, use of, and/or other conduct with respect to, another company's documents and information specifically by Ken Branch and William Erskine, and also by a Boeing engineer, a Boeing parametrician, a Boeing

manager, and a Boeing marketing director (each of whom is more specifically described in Appendix A); (b) Boeing's access to and/or use of documents and information relating to another company in the possession of Ken Branch, William Erskine, the Boeing engineer, the Boeing parametrician, the Boeing manager, or the Boeing marketing director; (c) alleged contacts between Boeing and government representatives in connection with the EELV procurement process, awards and restructurings; and (d) the conduct described in Appendix A.

2. The "Druyun Matter" is defined to include all matters relating to Boeing's dealings, communications, negotiations and/or relationships with Darleen Druyun while employed by the USAF, whether direct or indirect and whether or not related to USAF contracts or Boeing employment. This includes but is not limited to all conduct and events relating to (a) Boeing's hiring and employment of Druyun's daughter and future son-in-law; (b) Boeing's recruitment and hiring of Druyun; (c) Druyun's involvement in any Boeing contract or program while employed by the USAF; (d) alleged disclosure by Druyun to Boeing of EADS or Airbus information relating to the Tanker program in or about April 2002; (e) Boeing's retention of a retired USAF General Officer and his activities while retained by Boeing relating to the Tanker program or otherwise; and (f) the conduct described in Appendix B.

3. The "Agreement Term" is defined to mean two years from the date Boeing executes this Agreement.

#### **Boeing's Promises and Obligations**

4. In consideration for the USAOs' promises as set forth in paragraphs 8 and 9 below, Boeing knowingly, voluntarily, and with the advice of counsel, agrees to the following:

a) Boeing accepts and acknowledges responsibility for the conduct of its employees in connection with the EELV Matter and the Druyun Matter;

b) Boeing agrees to pay a monetary penalty of \$50,000,000 to the United States not later than 14 days after this Agreement is executed;

- c) Boeing agrees to pay the amount of \$565,000,000 to the United States as set forth in the Civil Settlement Agreement and Release executed concurrently herewith in the form attached hereto as Appendix C;
- d) Boeing agrees to continue to cooperate with the USAOs, as described in paragraph 6;
- e) Boeing agrees to maintain the ethics and compliance program described in paragraph 7;
- f) Boeing agrees that during the Agreement Term it will not commit any federal criminal offenses (1) related to access to, possession of or use of (a) another company's "competition sensitive" or "source selection" information as defined in the federal Procurement Integrity Act or (b) another company's trade secret information in connection with a federal procurement, or (2) constituting a violation of any of the provisions contained in Chapter 11 of Title 18 of the United States Code (collectively, the "Defined Offenses") . For purposes of determining compliance with this Agreement (as opposed to legal responsibility), the commission of a Defined Offense by a Boeing employee classified at a level below Executive Management as defined by Boeing's internal classification structure in place at the time of execution of this Agreement shall not be deemed to constitute the commission of a Defined Offense by Boeing; and the commission of a Defined Offense by a Boeing employee shall not be deemed to constitute the commission of a Defined Offense by Boeing so long as the underlying allegation or conduct is reported by Boeing consistent with the provisions of paragraph 7 below. The USAOs retain the right to exercise their discretion to prosecute any Defined Offense so reported to the extent that such Defined Offense would otherwise be prosecutable by the USAOs. Boeing agrees that it shall notify the USAOs if it is charged with any federal criminal offense, including any Defined Offense, by any other United States Attorney's Office during the Agreement Term;
- g) Boeing agrees that semi-annually during the Agreement Term, including between thirty and sixty days before the expiration of the Agreement Term, the General Counsel

of Boeing shall execute, under penalty of perjury, and provide to the USAOs, a certification that, to the best of his or her knowledge after inquiry he or she believes to be sufficient to assess compliance, Boeing is in compliance with the terms of this Agreement;

h) Boeing agrees that the federal statute of limitations for any criminal offense relating to the Druyun Matter is tolled for the Agreement Term plus 90 days;

i) Boeing agrees that by signing this Agreement, it waives any claim or defense based on the statute of limitations, any claim of preindictment delay, or any speedy trial claim with respect to any prosecution relating to the Druyun Matter except to the extent that such claims or defenses existed on the date Boeing signed this Agreement;

j) Boeing agrees that by signing this Agreement, it waives the right to be prosecuted by indictment for any federal criminal offense relating to the Druyun Matter and that any such prosecution may be brought by way of an information; and

k) Boeing agrees that, in any criminal prosecution for any federal criminal offense relating to the Druyun Matter, and/or any conduct disclosed pursuant to the terms of this Agreement, the USAOs will be free to use in any way any statements, testimony, information, documents and tangible evidence disclosed under the terms of this Agreement, as well as any evidence in whatever form, derived therefrom (collectively the "Disclosed and Derived Information"), and Boeing will be unable to and waives any right to assert that any Disclosed and Derived Information (1) was obtained in violation of any constitutional, statutory or rule-based right or privilege; or (2) is inadmissible because of Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other constitutional provision, statute, or rule.

5. The parties acknowledge that Boeing is entering into this Agreement voluntarily, and it is the express intention of the parties that disclosures by Boeing pursuant to the terms of this Agreement shall be deemed voluntary for any and all purposes, including but not limited to participation in any voluntary disclosure program or consideration under the Deputy Attorney

General's January 20, 2003 Memorandum, Principles of Federal Prosecution of Business Organizations.

6. During the Agreement Term, Boeing agrees to continue to cooperate fully and actively with the USAF, with NASA, with the USAOs, and, at the direction of the USAOs, with the Air Force Office of Special Investigations ("AFOSI"), the Defense Criminal Investigative Service ("DCIS"), the Department of Defense Office of Inspector General ("DOD-OIG"), the NASA Office of the Inspector General ("NASA-OIG"), and any other government agency designated by the USAOs regarding the EELV and Druyun Matters as set forth in this paragraph. (The USAF, AFOSI, DOD-OIG, NASA, NASA-OIG, DCIS, and any other government agency designated by the USAOs will hereinafter collectively be referred to as "the Designated Agencies.") Boeing shall (a) truthfully disclose and provide to the USAOs and the Designated Agencies information, documents, records and other tangible evidence within Boeing's possession, custody or control relating to the EELV and Druyun Matters and the matters encompassed within paragraph 7(c) below, about which such entities may inquire, that are not subject to the attorney-client privilege or the work product doctrine; (b) if requested by the USAOs, timely provide a detailed privilege log for those documents, records or other evidence requested but withheld under a claim of privilege; (c) if requested by the USAOs, negotiate in good faith to attempt to arrive at a limited waiver of the attorney-client privilege and work-product doctrine sufficient to allow the USAOs to be provided with identified materials otherwise withheld under a claim of these protections; (d) use its best efforts to make available for interviews (to the extent such individuals are willing to be interviewed) and/or testimony, present and former Boeing officers, directors, employees, agents, consultants and independent contractors as requested by the USAOs, with Boeing agreeing that, at a witness's request, any such interviews may be conducted outside the presence of Boeing counsel or other Boeing personnel; and (e) provide qualified custodians of records to introduce into evidence documents, records and tangible evidence produced by Boeing.

7. With respect to Boeing's ethics and compliance program:

a) The USAOs acknowledge that Boeing has implemented significant changes to its ethics and compliance program, including its processes and procedures governing the handling of competitor information and the hiring and employment of former government officials. Those remedial measures are summarized in Appendix D.

b) The USAOs further acknowledge that Boeing has entered into an Interim Administrative Agreement (the "IAA") with the Department of the Air Force, in force as of March 4, 2005, which includes a comprehensive set of compliance monitoring provisions. A copy of the IAA is attached hereto as Appendix E. The IAA, however, is not incorporated herein and the USAOs are not hereby made a signatory or party to the IAA. Among other things, the IAA requires that the Special Compliance Officer ("SCO") referenced therein make periodic reports to the USAF and that Boeing periodically report to the USAF the status of "all investigations conducted by Boeing involving allegations of fraud or criminal offenses by (a) Boeing employees and/or consultants for the benefit of Boeing where there is evidence of possible willful misconduct or (b) Boeing subcontractors in connection with obtaining or performing a subcontract under a Boeing U.S. Government prime contract or subcontract where there is evidence of possible willful misconduct by the subcontractor." Appendix E, ¶¶ 5, 6(c)(ii).

c) Boeing agrees that Paragraph 6(c)(ii) of the IAA setting forth the status reports required to be made to the Air Force shall also include similar status reports of all ongoing Legal Investigations relating to an issue concerning a Defined Offense conducted by the Boeing Law Department pursuant to Boeing Internal Procedure PRO 6419. As used herein, the term "Legal Investigation" has the meaning set forth in Boeing Internal Procedure PRO 6419 Paragraph 1.A.

d) Boeing agrees that the reports required by paragraphs 5 and 6 of the IAA (including the reports referred to in subparagraph (c) above) will, at the time the reports are provided to the Air Force, be copied in full to the SCO and the USAOs. The USAOs may distribute the reports to any Designated Agencies. Boeing shall be deemed to have requested

confidential treatment of such reports under the provisions of the Freedom of Information Act. The USAOs agree to advise Boeing whenever any person makes a request pursuant to the Freedom of Information Act for, or that in the USAOs' determination would encompass, the reports provided by Boeing under this subparagraph. In the event the USAOs or a Designated Agency intend to release or disclose the reports provided to them under this subparagraph pursuant to any such request, the USAOs agree to notify Boeing of such intention at least twenty (20) days prior to such release or disclosure.

e) Boeing agrees that it shall, within 90 days of the date of execution of this agreement by Boeing, provide the USAOs with a certification executed by its Senior Vice President – Office of Internal Governance that it is maintaining the ethics and compliance program described in this paragraph and that such program comports with the criteria set forth in Section 8B2.1 of the United States Sentencing Guidelines.

f) As part of its ethics and compliance program during the Agreement Term, Boeing agrees to maintain procedures for:

(1) Required periodic training of employees with respect to ethics and compliance issues as appropriate to the job function of the employee, including annual training, as appropriate to job function, relating to (a) procurement integrity; (b) safeguarding of other companies' proprietary/trade secret information; and (c) conflict of interest rules regarding employment discussions with federal employees;

(2) Discipline in accordance with Boeing's existing disciplinary process for employees who are found to have violated Boeing ethics standards or policies or procedures relating to compliance, or who have been convicted of a crime;

(3) Prohibiting retaliation against employees who report or seek guidance regarding potential or actual violation of Boeing's ethics standards, compliance-related policies or procedures, or law or regulation;

(4) Maintenance of an anonymous "hot line" mechanism, to the extent and where legally permissible, by which employees can report or seek guidance regarding

potential or actual violation of Boeing's ethics standards, compliance-related policies or procedures, or law or regulation;

(5) For matters referred to Boeing's Law Department under Boeing Internal Procedure PRO-6419, preservation of possible evidence, including electronic evidence, as determined under the Law Department Investigation Procedure based upon the nature and subject matter of the investigation or as requested by the USAF or the USAOs for any individual matter reported under the IAA and this Agreement; and

(6) The periodic auditing of Boeing's ethics and compliance program provided for under the IAA, provided that at least one such audit occurs during the Agreement Term.

#### **Promises and Obligations of the USAOs**

8. In exchange for Boeing's good faith performance of its promises and obligations as set forth in paragraphs 4 through 7 of this Agreement:

a) Subject to the terms and conditions of this Agreement, the USAOs agree not to seek any federal criminal charges against Boeing relating to the EELV and Druyun Matters.

b) The USAOs agree to bring the nature and extent of Boeing's cooperation and compliance with its obligations under this Agreement to the attention of federal, state or local law enforcement or licensing agencies or authorities if requested by Boeing or its attorneys or if the USAOs otherwise believe it is appropriate to do so.

9. Nothing in this Agreement shall preclude or limit the USAOs from bringing a criminal prosecution against Boeing for making false statements, obstruction of justice, perjury, subornation of perjury, or aiding and abetting or conspiring to commit such offenses based on Boeing's conduct in performing its obligations under this Agreement. Nor does anything in this Agreement limit or preclude the USAOs from bringing a criminal prosecution against Boeing for any conduct other than that relating to the EELV and Druyun Matters.



### **Breach of the Agreement**

10. It shall constitute a breach of this Agreement for Boeing knowingly to engage in conduct that constitutes a material failure to abide by or fully perform any of the promises set forth in paragraphs 4 through 7 above during the Agreement Term. For purposes of determining compliance with and/or breach of this Agreement (as opposed to legal responsibility), and subject to the provisions of paragraph 4(f) of this Agreement, conduct by a Boeing employee classified at a level below Executive Management as defined by Boeing's internal classification structure in place at the time of execution of this Agreement shall not be deemed to constitute conduct by Boeing.

11. The USAOs shall confer with one another and jointly make any decisions or determinations and jointly take any actions with respect to a breach of this Agreement by Boeing. In the event that the USAOs preliminarily believe that Boeing has breached this Agreement, the USAOs shall provide Boeing with written notice of this preliminary belief and Boeing will have 45 calendar days from the date of that written notice in which to make a presentation to the USAOs or their designees to demonstrate that no breach has occurred or, to the extent applicable, that the breach is not a knowing breach or has been cured. The USAOs shall thereafter provide written notice to Boeing of their final determination regarding whether or not a breach has occurred. Boeing reserves the right to seek an opportunity to appeal to a higher authority within the DOJ in connection with any decisions, determinations or actions by either or both of the USAOs with respect to any claim that Boeing has breached this Agreement. Boeing waives any right it may have to a determination by a United States District Court with respect to whether it has breached this Agreement.

12. Should the USAOs, in accordance with the procedures set forth in paragraph 11 of this Agreement, conclude that this Agreement has been breached by Boeing, Boeing will still be required to pay any unpaid amount of the monetary penalty and civil settlement amount referenced in paragraphs 4(b) and 4(c) above, and the USAOs may jointly elect from either of

the following two remedies, the election to be announced to Boeing by the USAOs in the written notice of their final determination regarding whether or not a breach has occurred, and the election to be irrevocable as to the breach at issue and not subject to revisitation for any reason, including dissatisfaction by the USAOs with the outcome:

a) Remedy Option A:

(1) The USAO for the EDVA will immediately be free to prosecute Boeing for any federal offense relating to the Druyun Matter;

(2) In any criminal prosecution relating to the Druyun Matter, Boeing will continue to be precluded from raising any claim or defense based on the statute of limitations, any claim of preindictment delay, or any speedy trial claim, except to the extent that such claims or defenses existed on the date Boeing signed this Agreement;

(3) The USAO for the EDVA will continue to be free to use any Disclosed and Derived Information in any way in any criminal prosecution relating to the Druyun Matter, and Boeing will continue to be unable to assert that any Disclosed and Derived Information (1) was obtained in violation of any constitutional, statutory or rule-based right or privilege; or (2) is inadmissible because of Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other constitutional provision, statute, or rule;

(4) In any proceeding or trial in any criminal prosecution relating to the Druyun Matter, Boeing shall be deemed to stipulate to the admissibility into evidence of Appendix B and shall be precluded from offering any evidence or arguments that the statements in Appendix B are untrue;

(5) As of the time it receives written notification of the USAOs' election of this remedy, Boeing will be relieved of the obligations set forth in paragraphs 6 and 7 of this Agreement.

b) Remedy Option B:

(1) The USAOs may seek a declaration as set forth below that Boeing is in breach of the Agreement and is liable for a penalty of not more than \$10,000,000, with the amount within that range to be determined based on the nature, seriousness, and consequences of the breach.

(2) The issue of whether Boeing has breached the Agreement and, if so, the amount of the penalty up to \$10,000,000 to be paid by Boeing based on the factors described above shall be decided by retired United States District Judge Lourdes Baird, or such other person as the parties agree upon, acting as a Special Master (the "Special Master"), based on such proceedings as shall be specified by the Special Master, and with no right of appeal of the Special Master's decision. Review by the Special Master of any determination by the USAOs shall be de novo, and the USAOs shall bear the burden of proof to establish any factual issues, as specified by the Special Master, by a preponderance of the evidence. Boeing agrees to pay all costs for retaining the Special Master.

(3) Boeing agrees to make payment of the penalty decided upon by the Special Master pursuant to this paragraph within 30 days of notice of the Special Master's decision on the matter. Boeing's failure to make timely payment will constitute a separate material breach of this Agreement.

(4) Payment of a penalty by Boeing pursuant to this subparagraph 12(b) shall not relieve Boeing of performing its obligations under this Agreement.

c) Under no circumstances shall Boeing be subject to both prosecution under subparagraph 12(a) and the process provided for under subparagraph 12(b) for the same breach.

#### **Miscellaneous Provisions**

13. Boeing agrees to the following:

a) *Unallowable Costs Defined.* Boeing agrees that all costs, as defined in the Federal Acquisition Regulations, FAR § 31.205-47, incurred by or on behalf of its divisions,

subsidiaries, affiliates, officers, directors, employees, representatives, or agents, in connection with:

- (1) the matters covered by this Agreement and any related civil agreement;
  - (2) the Government's audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement;
  - (3) Boeing's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and criminal investigation(s) in connection with the matters covered by this Agreement;
  - (4) the negotiation of this Agreement and any related civil agreement;
- and

(5) payments made pursuant to this Agreement and any related civil agreement (including the payments themselves), are unallowable costs for Government contract accounting purposes (hereafter referred to as "Unallowable Costs"). The "matters covered by this Agreement" include related civil matters.

b) *Treatment of Unallowable Costs.* Unallowable Costs will be separately accounted for by Boeing, on a fiscal year basis, by identification of costs incurred through

- (1) accounting records, to the extent possible;
- (2) memorandum records including diaries and informal logs, where accounting records are not available; or
- (3) good faith itemized estimates, where no other accounting basis is reasonably available.

Unallowable Costs previously submitted or treated by Boeing as allowable for Government contract accounting purposes will be withdrawn; any charge or charges previously submitted that were based on such costs will be adjusted accordingly; and any refund or credit due to the United States as a result will be paid or given promptly, regardless of any previous agreement to the contrary. Boeing will provide the cognizant Government contracting officers or their designated

representatives with a fiscal year schedule of all incurred costs excluded, withdrawn, or adjusted as a result of this Agreement.

c) Nothing in this Agreement is intended to make allowable costs that are otherwise unallowable by prior agreement of the parties (including, but not limited to, Contract No. F04701-98-D-0002, Modification No. P00057, dated October 16, 2003) or by operation of law. Boeing agrees that any costs made or recognized as unallowable by this Agreement will not be transferred to the United Launch Alliance or any other entity if the result would be that such costs would become allowable costs for Government contract accounting purposes.

14. This Agreement is binding on Boeing and the USAOs, but specifically does not bind any other federal agencies, or any federal, state or local law enforcement or licensing agency or authority. Nothing in this Agreement restricts in any way the ability of the USAOs to proceed against any individuals or any entity other than Boeing. This Agreement does not confer or provide any benefits, privileges or rights to any individual or entity other than the parties hereto. Boeing may raise defenses and/or assert affirmative claims in any civil proceedings brought by private parties as long as doing so does not otherwise violate any term of this Agreement.

15. Boeing warrants and represents that its undersigned Senior Vice President – Law is authorized to execute and deliver this Agreement and has the authority, granted by Boeing’s Board of Directors, to bind Boeing to its terms. The USAOs warrant and represent that their undersigned representatives are authorized to execute and deliver the Agreement and bind the USAOs to its terms.

16. Boeing agrees that if it sells or merges all or substantially all of its business operations as they exist as of the date of this Agreement to or into a single purchaser or group of affiliated purchasers during the term of this Agreement, it shall include in any contract for sale or merger a provision binding the purchaser/successor to the obligations described in this Agreement and this Agreement shall remain in effect.

17. This Agreement will not become effective unless and until the Civil Settlement Agreement and Release, in the form attached hereto as Appendix C, is fully executed by all parties thereto.

18. All notices to Boeing required or permitted by this Agreement shall be in writing and shall be given by first class, postage prepaid mail and by facsimile or electronic transmission effective in each case upon the later of the date of mailing or the date of transmission, addressed as follows:

The Boeing Company  
Attn: Paul Ehlenbach  
100 North Riverside Plaza  
Chicago, IL 60606  
Facsimile: 312-544-2828  
E-mail: Paul.j.ehlenbach@boeing.com

19. All notices or reports to the USAOs required or permitted by this Agreement shall be in writing and shall be given by first class, postage prepaid mail and by facsimile or electronic transmission, addressed as follows:

United States Attorney's Office  
Central District of California  
Attn: George S. Cardona  
1100 United States Courthouse  
312 North Spring Street  
Los Angeles, CA 90012  
Facsimile: 213-894-2535  
E-mail: George.S.Cardona@usdoj.gov

United States Attorney's Office  
Eastern District of Virginia  
Attn: Robert W. Wiechering  
2100 Jamieson Avenue  
Alexandria, VA 22314  
Facsimile: 703-299-3981  
E-mail: Bob.Wiechering@usdoj.gov

20. This Agreement and Appendices A, B and D hereto constitute the entire agreement. Except as set forth herein, there are no promises, understandings or agreements

between the USAOs and Boeing or Boeing's counsel. No additional agreement, understanding or condition may be entered into unless in a writing signed by all of the USAO for the CDCA, the USAO for the EDVA, and a duly authorized representative of Boeing.

21. This Agreement is covered by the laws of the United States. The parties agree that exclusive jurisdiction and venue for any dispute arising under this Agreement is in the United States District Courts for the Central District of California and Eastern District of Virginia.

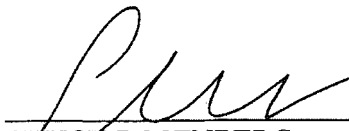
22. The parties consent to disclosure of this Agreement, and information about this Agreement, to the public.

23. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement. Facsimile or electronically submitted signatures are acceptable, binding signatures for purposes of this Agreement.

FOR THE USAOS

DATED: 6/30/06

DATED:

  
CHUCK ROSENBERG  
United States Attorney  
ROBERT W. WIECHERING  
Assistant United States Attorney  
Eastern District of Virginia

DEBRA WONG YANG  
United States Attorney  
GEORGE S. CARDONA  
Assistant United States Attorney  
Central District of California

FOR THE BOEING COMPANY

DATED:

DOUGLAS G. BAIN  
Senior Vice President – Law  
The Boeing Company

between the USAOs and Boeing or Boeing's counsel. No additional agreement, understanding or condition may be entered into unless in a writing signed by all of the USAO for the CDCA, the USAO for the EDVA, and a duly authorized representative of Boeing.

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FOR THE USAOS


DATED:

DATED:

CHUCK ROSENBERG  
United States Attorney  
ROBERT W. WIECHERING  
Assistant United States Attorney  
Eastern District of Virginia

FOR THE BOEING COMPANY

DATED:

  
DEBRA WONG YANG  
United States Attorney  
GEORGE S. CARDONA  
Assistant United States Attorney  
Central District of California

DOUGLAS G. BAIN  
Senior Vice President - Law  
The Boeing Company



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FOR THE USAOS

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CHUCK ROSENBERG  
United States Attorney  
ROBERT W. WIECHERING  
Assistant United States Attorney  
Eastern District of Virginia

DEBRA WONG YANG  
United States Attorney  
GEORGE S. CARDONA  
Assistant United States Attorney  
Central District of California

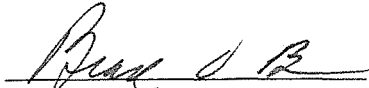
FOR THE BOEING COMPANY

DATED: *June 29, 2006*

  
DOUGLAS G. BAIN  
Senior Vice President – Law  
The Boeing Company

REVIEWED AND APPROVED:

DATED: 6/30/06



Brad D. Brian  
Jerome C. Roth  
Munger, Tolles & Olson LLP  
Attorneys for The Boeing Company

DATED:

Stephen W. Preston  
Jamie S. Gorelick  
Wilmer Cutler Pickering Hale and Dorr LLP  
Attorneys for The Boeing Company

DATED:

Richard Cullen  
McGuire Woods LLP  
Attorneys for The Boeing Company

REVIEWED AND APPROVED:

DATED:

DATED: 6/30/06



Brad D. Brian  
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Attorneys for The Boeing Company

DATED:

Richard Cullen  
McGuire Woods LLP  
Attorneys for The Boeing Company

REVIEWED AND APPROVED:

DATED:

DATED:

\_\_\_\_\_  
Brad D. Brian  
Jerome C. Roth  
Munger, Tolles & Olson LLP  
Attorneys for The Boeing Company

Stephen W. Preston  
Jamie S. Gorelick  
Wilmer Cutler Pickering Hale and Dorr LLP  
Attorneys for The Boeing Company

DATED: *June 29, 2006*

*Richard Cullen*  
Richard Cullen  
McGuire Woods LLP  
Attorneys for The Boeing Company

## **APPENDIX A**

### **EELV**

#### **The Evolved Expendable Launch Vehicle Program**

1. From in or about 1995 until the present, the United States Air Force (“USAF”) has overseen the Evolved Expendable Launch Vehicle (“EELV”) program, which is intended to develop a new generation of space launch vehicles with technological advances that would improve the operability of the government’s expendable space launch systems and reduce the costs of launching government and commercial satellites into space.

2. Numerous aerospace contractors have competed in the EELV program, which proceeded in phases: (1) the Low-Cost Concept Validation (“LCCV”) phase, (2) the pre-Engineering, Manufacturing and Development (“pre-EMD”) phase, and (3) the Engineering, Manufacturing and Development (“EMD”) phase. All competitors in the EELV program were required to provide specified information in each phase, including, for example, cost information, and to update the information as necessary. Until in or about November 1997, the USAF had intended to implement a “winner-take-all” procurement strategy by selecting only one aerospace contractor to provide the EELV system.

3. In or about August 1995, the USAF awarded \$30 million contracts to each of four aerospace contractors, including Lockheed Martin Corporation (“Lockheed Martin”), McDonnell Douglas Corporation (“McDonnell Douglas”), and The Boeing Company (“Boeing”), to compete in the LCCV phase of the EELV program. In this phase, the competition focused on the aerospace contractors’ respective EELV preliminary designs and risk reduction demonstrations.

4. In or about December 1996, the USAF selected Lockheed Martin and McDonnell Douglas to continue competing in the pre-EMD phase of the EELV program.

Each contractor was awarded a \$60 million contract to participate in this phase, which focused on refining EELV system concepts and completing a detailed EELV system design.

5. In or about August 1997, Boeing acquired McDonnell Douglas and thereby reentered the EELV program competition. As used hereafter, the term “Boeing” refers to and includes McDonnell Douglas.

6. In or about November 1997, the USAF revised its procurement strategy from a “winner-take-all” strategy to one that was designed to maintain the ongoing competition between Lockheed Martin and Boeing through the development and production of their respective EELV programs.

7. On or about June 19, 1998, the USAF issued a Request for Proposals to Lockheed Martin and Boeing in connection with the EMD phase of the EELV program. During this phase, Boeing and Lockheed Martin were supposed to complete launch vehicle development, establish manufacturing capabilities, construct and modify launch site infrastructure, and activate launch sites.

8. On or about July 20, 1998, Lockheed Martin and Boeing submitted initial proposals to the USAF. The USAF issued a Final Proposal Request in connection with the EMD phase of the EELV program on or about October 2, 1998. On or about October 5, 1998, Lockheed Martin and Boeing submitted final proposals to the USAF.

9. On or about October 16, 1998, the USAF awarded a \$500 million EMD agreement to each of the contractors. The USAF also awarded launch services contracts for 28 government payloads scheduled to launch between 2002 and 2006. Boeing was awarded launch services contracts for 19 launch missions; Lockheed Martin received contracts for nine launch missions. Of those nine, two were required to be launched from a West Coast facility. In 2000, the USAF reallocated Lockheed Martin’s two west coast

launch missions to Boeing and relieved Lockheed Martin of its obligation to build a west coast launch facility.

10. As a result of the conduct described below, these launch contracts were modified by the Air Force in 2003. Boeing and Lockheed Martin continue presently to compete for launch services contracts awarded as part of the EELV program procurement.

#### Boeing Employees' Possession of Lockheed Martin EELV Documents

11. Kenneth Branch ("Branch") was an aerospace engineer who worked for Lockheed Martin in or about 1995 and 1996 on the ground operations aspect of its EELV program. During this time, Branch had access to Lockheed Martin documents, or copies thereof, including documents restrictively marked by Lockheed Martin as containing competition-sensitive or other proprietary information, that related to Lockheed Martin's EELV, which was produced for interstate and foreign commerce (hereinafter referred to as "Lockheed Martin EELV Documents").

12. In or about August 1996, Branch interviewed for a position in Boeing's EELV program with two Boeing employees, including William Erskine ("Erskine"). Erskine was an aerospace engineer at Boeing who worked on the launch operations aspect of Boeing's EELV program in Titusville, Florida, and in Cape Canaveral, Florida, when Boeing later moved the program there. During the interview, without obtaining permission from Lockheed Martin, Branch provided Erskine with certain Lockheed Martin EELV Documents which were restrictively marked. There is evidence that Erskine showed one such document to another Boeing employee.

13. In or about December 1996, just before the start of the pre-EMD phase of the EELV program, Branch learned from Boeing that he would be hired to work in its EELV program.

14. In or about January 1997, when Branch left Lockheed Martin, he knowingly brought with him to Boeing without obtaining permission from Lockheed Martin some of the Lockheed Martin EELV Documents that he had previously accessed while he worked at Lockheed Martin, including restrictively-marked documents.

15. Once at Boeing, Branch began working in the ground operations aspect of the Boeing EELV program in Titusville and Cape Canaveral, Florida. From 1997 through 1999, in Titusville and Cape Canaveral, Florida, Branch continued to possess certain Lockheed Martin EELV Documents including some that were restrictively marked.

16. In 1997, in Titusville and Cape Canaveral, Florida, Branch provided Erskine with Lockheed Martin EELV Documents, including restrictively-marked documents, which Erskine thereafter possessed until 1999.

17. Starting in or about January 1997, an engineer employed at Boeing ("the Boeing engineer") headed a group whose objective was to acquire technical, cost and other data relating to Lockheed Martin's EELV program in order for Boeing to better compete against Lockheed Martin in the EELV program competition. This group was based at a Boeing facility in Huntington Beach, California. In 1997 Branch traveled to Huntington Beach, California, and provided the Boeing engineer with Lockheed Martin EELV Documents, including restrictively-marked documents.

18. In 1997, another Boeing employee, a parametrician ("the Boeing parametrician") who prepared estimates of manufacturing and production costs for Boeing launch vehicles and those of its competitors, was assigned to prepare at the Boeing engineer's direction parametric estimates relating to Lockheed Martin's EELV program for Boeing to use. In or about March 1997, in Huntington Beach, California, the Boeing engineer provided the Boeing parametrician with Lockheed Martin EELV Documents, including restrictively-marked documents, that the Boeing engineer had



received from Branch so that the Boeing parametrician could use the information to prepare cost estimates relating to Lockheed Martin's EELV program.

Boeing's Possession of Restrictively Marked Lockheed Martin Documents in 2000 and 2001

19. On September 28, 2000, a former employee of Lockheed Martin came to work as a marketing director for an entity later acquired by Boeing (the "Boeing marketing director"). Prior to leaving Lockheed Martin, the Boeing marketing director copied material from his Lockheed Martin computer system, which he then later loaded onto his Boeing laptop.

20. On or about April 5, 2001, the Boeing marketing director electronically sent from his Boeing laptop several attachments containing documents marked as Lockheed Martin Proprietary Information to seven Boeing employees. An investigation ensued and a review of the data stored on the Boeing marketing director's Boeing laptop showed that there were stored on his laptop hundreds of files containing documents marked as Lockheed Martin Proprietary Information and that there were thousands of individual pages in those files.

The NASA Launch Services Contract

21. On or about October 15, 1999, National Aeronautics and Space Administration ("NASA") publicly released a Request for Proposal for the NASA Launch Service ("NLS") contract. Firm Fixed Price ("FFP") awards were to be initially awarded to qualified launch services providers for a portion of the eight initial launches under the contract. Successful bidders would also be awarded Indefinite Delivery

Indefinite Quantity (“IDIQ”) contracts, making them eligible to compete for up to 60 launches over a ten-year period, from 2000 to 2010. NASA intended that the NLS contract would promote ongoing competition for launch service task orders among successful bidders throughout the ten-year performance period. On or about June 16, 2000, NASA awarded Boeing and Lockheed Martin NLS IDIQ contracts to compete for launch services. No other vendors received NLS IDIQ contract awards. Of the initial mission set, Boeing was awarded seven of the eight FFP missions. NASA declined to exercise the remaining option mission.

22. On December 2, 2002, NASA awarded to Boeing a non-competitive task order based on the Boeing NLS contract. Under the task order, NASA agreed to pay Boeing \$1.46 billion for 19 launch services with launch dates beginning in 2006 (“the NLS 19-pack procurement”). NASA justified the non-competitive award based largely on Boeing’s having the only risk-certified launch vehicle, the Delta II, and the only west coast launch facility. (NASA grants risk certifications to launch vehicles after they perform a number of successful launches.) NASA has stated that NASA also justified the non-competitive award by stating that even if other vehicles became certified prior to the first 19 Pack launch in 2006, they would not be price competitive with Boeing’s Delta II.

Boeing’s Possession of Restrictively Marked Lockheed Martin and General Dynamics Documents in 2001 and 2002

23. In July 2001, Boeing hired an employee to prepare competitive assessments of Boeing’s launch vehicle competitors, including Lockheed Martin (“the Boeing manager”). Previously, the Boeing manager had worked for General Dynamics

and Lockheed Martin (when it was acquired by General Dynamics) from 1979 through 1994. During this time, the Boeing manager had access to internal Lockheed Martin EELV information and was involved in the preparation of business plans for the Atlas II (an earlier version of the Atlas V). When the Boeing manager came to work for Boeing, he continued to be involved in competitive assessments and, among other tasks, worked on focused competitions between the Atlas V and Delta IV.

24. Shortly after arriving at Boeing, the Boeing manager was provided with a Boeing estimate of Atlas V costs that had been prepared by the Boeing parametrician. Because the Boeing manager considered the Boeing parametrician's estimate to be flawed, the Boeing manager prepared and shared with Boeing employees his own Atlas V cost estimate. The Boeing manager's input led the Boeing parametrician to slightly downwardly revise his own Boeing Atlas V cost estimate. Further investigation revealed that this Atlas V cost estimate was used in connection with the preparation of assessments for three procurements: the Pluto Kuiper procurement; the Mars Reconnaissance Orbiter procurement; and the NLS 19-pack procurement.

25. In February 2003, Boeing learned that the Boeing manager possessed from his previous employment General Dynamics and Lockheed Martin documents or copies thereof, including restrictively marked documents ("General Dynamics and Lockheed Martin documents"). Such documents included a red binder found in the Boeing manager's office at Boeing, which contained documents marked with "competition-sensitive" legends. The Boeing manager also possessed at his home a blue book prepared between 1988 and 1989, which contained restrictive markings and which related to the business case for Lockheed Martin's Atlas I and Medium Launch Vehicle II (both

earlier versions of the Atlas V) . Some of the figures in the Boeing manager's Atlas nonrecurring cost estimates matched figures in the restrictively marked General Dynamics and Lockheed Martin documents that were found in the Boeing manager's possession.

26. At all times, Branch, Erskine, the Boeing engineer, the Boeing parametrician, the Boeing manager, and the Boeing marketing director were acting within the scope of their duties at Boeing when they engaged in the conduct set forth above.

## **APPENDIX B**

### **DRUYUN**

#### **I. Background**

Michael M. Sears was, from May 2000 until November 2003, the Chief Financial Officer of The Boeing Company (“Boeing”). In March 2002, he also became a member of the Office of the Chairman, which consisted of four senior executives of the company. He was also a member of the Boeing Strategy and Executive Councils. Sears joined Boeing in August 1997 following the merger of Boeing and McDonnell Douglas Corporation, where he had been employed since 1969.

Darleen A. Druyun was, from 1993 until her retirement in November 2002, the Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management. In that Senior Executive Service position, she supervised, directed and oversaw the management of the Air Force acquisition program. In addition, she provided advice on acquisition matters to the Assistant Secretary of the Air Force for Acquisitions, the Chief of Staff of the Air Force, and the Secretary of the Air Force. Prior to Druyun’s service as the Principal Deputy Assistant Secretary of the Air Force for Acquisition and Management, she had a lengthy government career that included various positions in the Air Force, the Office of Management and Budget and the National Aeronautical and Space Administration.

Druyun’s daughter was employed by Boeing in their student development program in St. Louis, Missouri, having been hired by Boeing in November 2000. Prior to her daughter’s hiring, Druyun had contacted Sears and asked for his assistance in obtaining employment for her daughter in St. Louis. Sears contacted other managers at Boeing in an effort to obtain a position for Druyun’s daughter. (Druyun had previously contacted Sears regarding possible employment

for the boyfriend of her daughter. The boyfriend was subsequently hired and began employment at Boeing in September 2000.)

In 2002, Druyun was overseeing the Air Force negotiations with Boeing to lease 100 Boeing KC 767A tanker aircraft. These tanker aircraft were to be extensively modified versions of Boeing's 767 commercial aircraft and were to have as their primary mission air refueling of other military aircraft. The total value of the contract was projected to be in the range of \$20 billion. In the summer and fall of 2002, Druyun was also involved in negotiations with Boeing in her position as Chair of the Board of Directors of the NATO Airborne Early Warning and Control Program Management Organization. This involved restructuring of the NATO AWACS Mid-term contract, and the addition of \$100 million in funds. Sears did not personally participate in any of the negotiations with the Air Force in connection with any of these matters.

## **II. Discussions Concerning Druyun's Employment With Boeing**

During the summer of 2002, Druyun had reached the decision that she would retire from government service later that year. She did not publicly announce her decision to retire, but did notify her immediate supervisor, the Assistant Secretary of the Air Force for Acquisition, of her decision to retire on or about August 20, 2002. It was Druyun's intention, in the late summer of 2002, to seek employment in the defense industry following her retirement.

On August 13, 2002, Druyun traveled to Chicago to meet at Boeing's World Headquarters with various senior executives of Boeing, including Sears. At some point during her visit that day, Druyun told Sears that she was thinking of retiring later that year. Sears told Druyun that he would like to talk to her at the appropriate time about post-government employment. Druyun advised Sears that she could not talk to him about post-government employment until she completed work on certain Air Force/Boeing matters.

On September 3, 2002, Druyun's daughter sent to Sears an unsolicited encrypted E-mail over the Boeing intranet. Druyun's daughter did not personally know Sears but was aware that her mother, Druyun, had known and had professional dealings with Sears for a number of years. The subject line of the E-mail read "Please do not forward...RE: Darleen Druyun." In the E-mail, she advised Sears that her mother would be retiring from the Air Force. The E-mail stated that Druyun had filed her separation papers with her JAG, but had not publicly announced her decision to retire. It further stated that Druyun was interviewing with Lockheed Martin. The daughter encouraged Sears to recruit Druyun for a position at Boeing and stated that Druyun was "officially available." Sears responded to the E-mail as follows:

*...I met with your mom last week. She informed me of her plans, and I suggested that she and I chat. She said she needed to wait until she got some of our work completed before she should chat with me. Did I miss a signal or have the wrong picture? I'm with you...we need to be on her menu.*

Druyun's daughter responded minutes later:

*Oh! I think she is referring to the Tanker deal – might be too much of a conflict right now. She hopes to have the tanker deal made or scrapped by early Dec – seems like a long time off, maybe she has to wait that long before approaching us. It still makes me very worried that she is talking to Lockheed! She is visiting me tomorrow for a couple days...I hope that I can get a better understanding then...she is also talking to Raytheon and L3 (formerly E-systems, I think?) Anyway, we need to talk to her...*

Thereafter, Sears communicated with Druyun's daughter to help ascertain her mother's post-retirement plans and aspirations. Sears then sent an E-mail to the daughter stating, "I'd appreciate your feedback following your Mom's visit this week." Two days later, on September 5, 2002, Druyun's daughter sent Sears the following E-mail:

*As promised...please forgive the length!  
It is the tanker lease that prevents her from talking to you right away. She said to contact her on October 1.  
Let me tell you what she is looking for:*

1. *Must be challenging, tough, lots of responsibility. Does not want something that puts her on display. Wants to impact processes, cut bureaucracy.*
2. *Want to make a difference in the makeup of the IDS organization in terms of females...she thinks it is shameful that in the Albaugh's family there aren't women.*
3. *Would consider moving out of DC, but would like to stay.*
4. *ABSOLUTELY does not want to be somewhere under Muellner...she wants to be over him like at the Pentagon.*

*She told me point blank that she would think the perfect offer would be a COO-like position under Albaugh. Bottom line she wants to be able to make an impact in the company.*

*She interviewed with Lockheed's Robert Stevens, and he outlined where they would like her to fit in – something like business and process reforms (she used the term “watchdog”). She liked the sound of it, and mentioned she had a good rapport with Stevens and seemed to like what he was saying.*

*She is very interested in talking to us, but we would have to give her something that would blow her out of the water! She also mentioned that Boeing has her most admired quality: honest values.*

Sears sent Druyun's daughter a reply E-mail stating, “*I Oct it is, but I'll check with you to be sure as the date gets closer.*” On September 23, 2002, Druyun's daughter sent Sears the following E-mail:

*I am fresh back from a visit to DC to see the parents, and of course Mom and I discussed life after retirement. She announces it publicly on Friday, by the way. I told her that I had contacted you about discussing other employment plans, and she is VERY, VERY excited. She still wants a COO like position with IDS, and she said that is what Lockheed is doing for her right now in Bethesda. She told me very frankly that if the salary and position were ideal from us, she would accept with Boeing and work her first year traveling back and forth from DC (work 5 days in STL, fly back weekends)...*

*She wants to know if this “COO” position is a feasible creation in IDS, and I told her that I did not know...is this a possibility? She leaves for Brussels Tues, and will return this weekend, so she would like to hear from you next week after the 1<sup>st</sup>.*

Consistent with Druyun's request, as conveyed through her daughter's E-mail, that Sears contact Druyun after October 1, on or about October 2, 2002, Sears contacted Druyun by



telephone to schedule a meeting between them to discuss her possible post-government employment with Boeing. They agreed to meet in Orlando, Florida, on October 17, 2002.

After he scheduled the October 17<sup>th</sup> meeting with Druyun, Sears sent an E-mail to a senior Boeing executive, who was the head of the company's Human Resources Department and who was also a member of the Office of the Chairman and the Boeing Strategy Council. Sears' E-mail requested that the matter of Druyun's possible employment with Boeing be placed on the agenda for the next meeting of Boeing's Strategy Council, which was scheduled for October 8, 2002. Specifically, Sears' E-mail to the senior executive stated:

*...could we please use a bit of time to discuss job opportunities for Darleen Druyun at the 8 Oct meeting. I've got a session with her on 17 Oct to discuss Boeing interest/opportunities.*

The senior Human Resources executive then caused the Druyun employment matter to be placed on the agenda for the October 8, 2002 Strategy Council meeting.

On October 7, 2002, the day before the Strategy Council meeting, Sears and the other members of the Office of the Chairman met with the President of Boeing Integrated Defense System (IDS) in Seal Beach, California. This meeting was one of the two regularly scheduled meetings each year at which Boeing's senior executives discussed various personnel in IDS and planned for future personnel development and staffing in IDS. Boeing had a very disciplined succession planning process. At the semi-annual meetings held for each Boeing division, the members of senior management and the head of the division considered various personnel within the company who might be candidates for each senior position in both the near-term and the long-term. When the company learned of persons outside the company who were available and qualified for senior positions, the senior executives considered whether those persons would fit the company's needs.

Thus, on October 7 and 8, 2002, Sears and other members of the company's senior management discussed the possibility of employing Druyun following her retirement from government service. They were very interested in Druyun's considerable talent and experience. They also discussed the fact that they also did not want her to join Lockheed Martin, Boeing's primary competitor. They, therefore, discussed various possible positions for her at Boeing. Ultimately, they agreed that an appropriate position for Druyun would be as Deputy in IDS's Missile Defense Systems in Washington, D.C. Missile Defense Systems was not part of the Air Force's acquisitions process and, therefore, would avoid possible conflicts of interest in her post-retirement job.

During September and October 2002, Druyun had continued her employment discussions with officials of Lockheed Martin. On August 26, 2002, Druyun had submitted formal papers to the Air Force disqualifying herself from involvement in all Air Force matters involving Lockheed Martin. On October 16, 2002, during a meeting with a Lockheed Martin executive in Orlando, Florida, Druyun orally agreed to accept a position at Lockheed Martin upon her retirement from government service. On the same day, her retirement was publicly announced.

The following day, October 17, 2002, not knowing that Druyun had informally agreed to join Lockheed Martin, Sears flew to Orlando for the purpose of meeting Druyun to discuss post-retirement employment opportunities with Boeing. Druyun was already in Orlando to attend a National Defense Industrial Association Conference, as well as a NATO AWACS conference.

Sears and Druyun met alone in the private conference room at the General Aviation terminal of the Orlando Airport. The meeting lasted approximately thirty minutes. At the outset of the meeting, Druyun advised Sears that she had entered into a handshake agreement to work for Lockheed Martin starting January 2, 2003. She also advised Sears that she had not

disqualified herself from matters involving Boeing and, therefore, she should not be discussing possible employment with Boeing. Despite her statement that it was improper for her to discuss future employment with him, Sears and Druyun elected to engage in such discussions. Sears then told Druyun about the availability of a Deputy position in Missile Defense Systems to be located in Washington, D.C., as well as other company opportunities. He also discussed the customary salary for such a position, the amount of a signing bonus, possible start dates and the company's long-term outlook. Druyun advised Sears that she would consider the Boeing offer, that it met her criteria and that the compensation was similar to Lockheed Martin. She asked him to Federal Express a formal offer to her home on November 14, 2002. At the end of the meeting, Druyun and Sears agreed to keep their discussion confidential. At the conclusion of the meeting, Sears and Druyun discussed the Air Force F-22 program, in which Boeing participated as a subcontractor, including cost, software and late delivery of the aircraft.

The next day, October 18, 2002, Sears sent the following E-mail, with the subject line "Employment," to the three other members of the Officer of the Chairman and the President of IDS:

*Howdy, Had a "non-meeting" yesterday re: hiring Jim Evatt's deputy.  
Good reception to job, location, salary, longer-term outlook. Recommend  
we put together a formal offer:  
\* Job as we discussed  
\* Location refined as we discussed  
\* Salary \$250K (assuming that fits)  
\* Recruitment bonus \$50K (important dimension of offer could get by with \$40K)  
\* Start date 3 Jan 03 (and immediately travel to Desert meeting)  
FedEx offer to home for 14 Nov arrival...*

In the same E-mail, Sears recommended that another specific senior executive have a "further details" conversation with Druyun in the near future.

In late October 2002, the other senior executive referenced in the above-quoted E-mail spoke with Druyun. During that discussion, Druyun told the other senior executive that she had

decided to reject Boeing and join Lockheed, in part, because she had done so much work on Boeing matters.

In late October 2002, after learning of Druyun's conversation with the other Boeing senior executive and Druyun's decision to join Lockheed Martin, Sears telephoned Druyun and arranged to meet with her on November 5, 2002 at her Pentagon office. Thereafter, on October 31, 2002, Druyun's daughter sent an E-mail to Sears stating as follows:

*Not sure if you talked to [the other senior executive], but Mom has decided to go with Lockheed. She told me this weekend. She will make her announcement publicly on her last day (the 15th). I am sad!*

Later that day, Sears replied to Druyun's daughter via E-mail as follows:

*I did...and I've got a meeting with her next week to give it another try. All I heard was her concern over "integrity" given the work she's done on some of our programs...*

On November 5, 2002, in anticipation of her meeting with Sears later that day, Druyun submitted a letter to the Air Force stating she intended to enter into employment discussions with Boeing and was disqualifying herself from any matters involving Boeing. Later on November 5, 2002, Sears and Druyun met and discussed a job and terms of employment that were essentially the same as those discussed on October 17, 2002. Sears also offered Druyun a consulting position with Boeing.

On November 14, 2002, Boeing sent two formal job offers to Druyun's home, one as a consultant to Boeing and the other as the Deputy in IDS's Missile Defense Systems. On November 15, 2002, Druyun retired from government service. On December 16, 2002, she formally accepted Boeing's employment offer by signing the offer letter to become Deputy in Missile Defense Systems. Druyun began her employment at Boeing on January 2, 2003.

Following an internal investigation – in which Druyun and Sears tried unsuccessfully to conceal their misconduct – Boeing terminated both for cause on November 24, 2003 and

immediately reported their misconduct to federal authorities. Druyun entered a plea of guilty to conspiring to violate Title 18, United States Code, Section 208(a) on April 20, 2004 in the Eastern District of Virginia. Sears entered a plea of guilty to aiding and abetting a violation of Title 18, United States Code, Section 208(a) on November 15, 2004 in the Eastern District of Virginia. The Statement of Facts to which Sears stipulated in connection with his plea states, “[Sears] acknowledges ... that it was improper for [Druyun] to have [employment] negotiations with [Sears] when [Sears] understood that Druyun was personally and substantially participating in matters in which Boeing had a financial interest.”

## **APPENDIX C**

### **CIVIL SETTLEMENT AGREEMENT**

#### **PARTIES**

This Civil Settlement Agreement (Agreement), entered on June 30, 2006, is between the United States of America (United States), acting through the Department of Justice on behalf of the United States Air Force (Air Force) and the National Aeronautics and Space Administration (NASA), and The Boeing Company, acting through its Senior Vice President - Law.

The Parties agree as follows:

#### **PREAMBLE**

1. The "EELV/19 Pack Matter" is defined as the alleged possession, transfer, use, and concealment of another company's information, whether or not proprietary or trade secret and whether or not in written form, and whether or not constituting "competition sensitive" or "source selection" information as defined in 41 U.S.C. § 423, and the disclosure or nondisclosure of such conduct, in connection with Boeing's pre- and post-award participation in Air Force Contract Nos. F04701-98-9-0005 and F04701-98-D-0002 (the EELV Contracts) from 1995 through 2003, and Task Order 1 to NASA Contract No. NAS10-00001 (the 19 Pack) from 1999 through 2003. The EELV/19 Pack Matter includes (a) the alleged possession of, transfer of, and use of another company's information specifically by Kenneth Branch (Branch) and William Erskine (Erskine), and also by a Boeing engineer, a Boeing parametrician, a Boeing manager, and a Boeing marketing director; (b) Boeing's access to and use of documents and information relating to another company in the possession of Branch, Erskine, the Boeing engineer, the Boeing parametrician, the Boeing manager, or the Boeing marketing director; and (c) any alleged

contacts in the period 1997-2000 between Boeing and source selection officials in connection with the 1998 procurement and award of the EELV Contracts, or between Boeing and Joint Assessment Team members in connection with the 1999-2000 restructuring of the EELV Contracts.

2. The “Druyun Matter” is defined as (a) Boeing’s hiring and employment of Darleen A. Druyun’s (Druyun’s) daughter and future son-in-law; (b) Boeing’s recruitment of Druyun and act of hiring Druyun, including Boeing’s dealings, communications, negotiations, and relationships with Druyun, whether direct or indirect, in connection with the foregoing; and (c) any alleged improper bias or improper official action by Druyun resulting from (a) or (b).

3. The United States alleges that the EELV/19 Pack and Druyun Matters give rise to claims by the United States against Boeing under the False Claims Act, 31 U.S.C. § 3729; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Procurement Integrity Act, 41 U.S.C. § 423; the anti-fraud section of the Contract Disputes Act, 41 U.S.C. § 604; the gratuities statute, 18 U.S.C. §§ 201(c) and 216(b); and at common law for payment by mistake, unjust enrichment, breach of contract, fraudulent procurement of contracts, conflicts of interest, inducing a breach of fiduciary duty, and fraud.

4. Boeing denies liability under any such theories.

5. The Parties agree that this Agreement constitutes neither an admission of liability by Boeing nor a concession by the United States that its allegations are not well founded.

6. The Parties wish to avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of these claims.

## TERMS AND CONDITIONS

7. Upon execution of this Agreement, Boeing agrees to pay the United States Five Hundred Sixty-Five Million Dollars (\$565,000,000) (the Settlement Amount). Payment will be made within seven (7) days by electronic funds transfer pursuant to instructions provided by the Department of Justice.

8. Conditioned on Boeing's payment in full of the Settlement Amount and subject to the exceptions provided in Paragraph 9 below, the United States releases Boeing, its divisions, subsidiaries, affiliates, officers, directors, employees, representatives, and agents, from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Procurement Integrity Act, 41 U.S.C. § 423; the anti-fraud section of the Contract Disputes Act, 41 U.S.C. § 604; the gratuities statute, 18 U.S.C. §§ 201(c) and 216(b); the common law theories of payment by mistake, unjust enrichment, breach of contract, fraudulent procurement of contracts, conflicts of interest, inducing a breach of fiduciary duty, and fraud; or any other statute or common law theory creating claims for civil damages or civil penalties that the Civil Division has actual and present authority to assert and compromise, based upon the EELV/19 Pack and Druyun Matters as defined in Paragraphs 1 and 2 above.

9. Notwithstanding any term of this Agreement, the United States does not release Boeing from the following:

- a. any civil, criminal, or administrative claims arising under Title 26, United States Code (Internal Revenue Code);
- b. any criminal liability;



- c. suspension and debarment, regulatory agency action, or non-monetary administrative liability;
- d. any claims based on such obligations as are created by this Agreement;
- e. any express or implied warranty claims or other claims for defective or deficient goods or services, including the quality of goods and services;
- f. any claims for the failure to deliver goods or services;
- g. any civil or administrative claims against individuals, including current or former officers, directors, employees, representatives, or agents of Boeing, who are convicted, or who enter into a plea agreement, on criminal charges related to the EELV/19 Pack and Druyun Matters; provided, however, that if such an individual is legally entitled to repayment from Boeing, by claim for indemnification, contribution, reimbursement, or otherwise as a result of a claim brought by the United States, the release provided in Paragraph 8 above will apply to such individual with respect to such claim.

10. Boeing agrees to the following:

- a. *Unallowable Costs Defined.* Boeing agrees that all costs, as defined in the Federal Acquisition Regulation, FAR § 31.205-47, incurred by or on behalf of its divisions, subsidiaries, affiliates, officers, directors, employees, representatives, or agents, in connection with:

- (1) the matters covered by this Agreement and any related criminal agreement;
- (2) the Government's audit(s) and civil and criminal investigation(s) of the matters covered by this Agreement;
- (3) Boeing's investigation, defense, and corrective actions undertaken in

response to the Government's audit(s) and civil and criminal investigation(s) in connection with the matters covered by this Agreement;

- (4) the negotiation of this Agreement and any related criminal agreement; and
- (5) payment(s) made pursuant to this Agreement and any related criminal agreement (including the payments themselves),

are unallowable costs for Government contract accounting purposes (hereafter referred to as "Unallowable Costs"). For purposes of this Paragraph 10, the "matters covered by this Agreement" include related criminal matters.

b. *Treatment of Unallowable Costs.* Unallowable Costs will be separately accounted for by Boeing, on a fiscal year basis, by identification of costs incurred through

- (1) accounting records, to the extent possible;
- (2) memorandum records including diaries and informal logs, where accounting records are not available; or
- (3) good faith itemized estimates, where no other accounting basis is reasonably available.

Unallowable Costs previously submitted or treated by Boeing as allowable for Government contract accounting purposes will be withdrawn; any charge or charges previously submitted that were based on such costs will be adjusted accordingly; and any refund or credit due to the United States as a result will be paid or given promptly, regardless of any previous agreement to the contrary. Boeing will provide the cognizant Government contracting officers or their designated representatives with a fiscal year schedule of all incurred costs excluded, withdrawn, or adjusted as a result of this Agreement.

11. Nothing in this Agreement is intended to make allowable costs that are otherwise unallowable by prior agreement of the parties (including, but not limited to, Contract No. F04701-98-D-0002, Modification No. P00057, dated October 16, 2003) or by operation of law. Boeing agrees that any costs made or recognized as unallowable by this Agreement will not be transferred to the United Launch Alliance or any other entity if the result would be that such costs would become allowable costs for Government contract accounting purposes.

12. Boeing agrees to cooperate fully and truthfully with the Civil Division's investigation (whether conducted through its own or others' agents) of individuals and entities not released in this Agreement with respect to the EELV/19 Pack and Druyun Matters, as set forth in this paragraph. Upon reasonable notice, Boeing will encourage and not impair the cooperation of its directors, officers, employees, representatives, and agents, and will use its best efforts to make available and encourage the cooperation of its former directors, officers, employees, representatives, and agents, for interviews and testimony, consistent with the rights and privileges of such individuals. Boeing further agrees to furnish to the United States, upon reasonable request, any nonprivileged documents and records in its possession, custody, or control.

13. This Agreement is intended solely for the benefit of the Parties. By this Agreement the Parties do not release any claims against any other person or entity, except to the extent specifically provided for in this Agreement.

14. Boeing waives and will not assert any defenses it may have to any criminal prosecution or administrative action relating to the EELV/19 Pack and Druyun Matters, which defenses may be based in whole or in part on a contention that under the Double Jeopardy Clause or the Excessive Fines Clause, U.S. Const. amends. V and VIII, this Agreement bars a remedy

sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the internal revenue laws, Title 26 of the United States Code.

15. This Agreement is governed by the laws of the United States. The Parties agree that exclusive jurisdiction and venue for any dispute arising under this Agreement is in United States District Courts for the Central District of California and the Eastern District of Virginia.

16. This Agreement is binding on Boeing and its successors and assigns.

17. This Agreement represents the entire agreement between the Parties as to the subject matter thereof and may be amended or modified only by written consent of the Parties.

18. The Parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

19. Each person who signs this Agreement in a representative capacity warrants that he or she is duly authorized to do so.

20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same agreement.

21. This Agreement is effective on the date of the final signature required to execute this Agreement. Facsimile or electronically transmitted signatures are acceptable, binding signatures for purposes of this Agreement.

[SIGNATURE PAGES FOLLOW]

**THE UNITED STATES OF AMERICA**

DATED: \_\_\_\_\_

BY:

JUDITH RABINOWITZ  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

**THE BOEING COMPANY**

DATED: \_\_\_\_\_

BY:

DOUGLAS G. BAIN  
Senior Vice President - Law  
The Boeing Company

REVIEWED AND APPROVED

DATED: \_\_\_\_\_

BY:

BRAD D. BRIAN  
JEROME C. ROTH  
Munger, Tolles & Olson LLP  
Attorneys for The Boeing Company

DATED: \_\_\_\_\_

BY:

STEPHEN W. PRESTON  
JAMIE S. GORELICK  
Wilmer Cutler Pickering Hale and Dorr LLP  
Attorneys for The Boeing Company

DATED: \_\_\_\_\_

BY:

RICHARD CULLEN  
McGuire Woods LLP  
Attorneys for The Boeing Company

## **APPENDIX D**

### **REMEDIAL MEASURES**

#### **I. INTRODUCTION**

Prompted by the EELV and Druyun Matters, Boeing has renewed its commitment to ensuring employee compliance with company policies and procedures and statutory and regulatory requirements. After external evaluations and its own internal reviews, Boeing has taken significant remedial measures in five key areas: management involvement, hiring and employment practices, procurement integrity, employee training and Law Department investigative procedures.

#### **II. INDEPENDENT REVIEWS**

**A. Review by Former Senator Rudman.** Boeing retained former Senator Warren Rudman to undertake an independent review of its ethics/compliance procedures and policies relating to the treatment of sensitive or confidential competitor information. Boeing has provided a copy of the Rudman report dated November 3, 2003 ("Rudman I") to the Department of Justice, as well as a submission identifying the changes in policies and procedures that Boeing has implemented or is in the process of implementing in response to and/or in addition to the recommendations of Rudman I.

**B. Review by Former Senator Rudman on Hiring of Government and Former Government Employees.** Boeing also retained former Senator Rudman to undertake an independent review of its ethics/compliance procedures and policies relating to Boeing's recruiting, hiring and employment of government and former government employees. Boeing has provided a copy of the Rudman report dated February 26, 2004 ("Rudman II") to the Department of Justice, as well as a submission identifying the changes in policies and procedures that Boeing has implemented or is in the process of implementing in response to and/or in addition to the recommendations of Rudman II.

**C. Ethical Leadership Group ("ELG") Review.** Boeing retained ELG to conduct an outside review of Boeing's policies and procedures relating to ethics/compliance generally and has provided the ELG report dated October 23, 2003 (the "ELG Report") to the Department of Justice, as well as a submission identifying the changes in policies and procedures that Boeing has implemented or is in the process of implementing in response to and/or in addition to the recommendations of the ELG Report.

**D. Law Department Independent Consultant.** Boeing retained R. William Ide, III, former President of the American Bar Association, to conduct an outside review of the Boeing Law Department's investigation policies and procedures, and has provided

a copy of the report dated February 9, 2004, as well as a summary of improvements made, to the Department of Justice.

### **III. INTERIM ADMINISTRATIVE AGREEMENT**

In response to the EELV and Druyun Matters, the Department of the Air Force (the "Air Force") has thoroughly reviewed the ethics/compliance policies of Boeing and has entered into an Interim Administrative Agreement (the "IAA") adopted by Boeing as of September 22, 2004, and executed by the Air Force and in force as of March 4, 2005. The IAA sets forth specific remedial measures that Boeing has taken or has committed to take "to ensure that it possesses the high degree of business integrity required of a Government contractor" and includes rigorous assessment and reporting obligations regarding a comprehensive set of compliance improvements undertaken by Boeing.

**A. Special Compliance Officer ("SCO").** At its expense, Boeing has engaged an SCO acceptable to the Air Force -- BearingPoint, Inc. -- to provide the services of General George G. Babbitt, USAF (Ret.) as the SCO to oversee Boeing's implementation of the measures outlined in the IAA. In coordination with Boeing, the SCO has developed a Compliance Monitoring Plan which was approved by the Air Force in June 2005. The SCO is required to furnish periodic compliance reports (now monthly) to the Air Force, as well as two independent reports, the first of which was submitted November 10, 2005.

**B. Proposal Certification.** The IAA requires the SCO to review and certify certain competitive U.S. government proposals as having met Boeing's process requirements for preparation of such proposals. The first proposal certified by the SCO was the Buy III proposal for EELV. The SCO concluded that there was compliant execution.

**C. Future Outside Independent Review.** As provided in the IAA, Boeing will retain a consultant acceptable to the Air Force to conduct an additional outside, independent review of its ethics and compliance policies and procedures. A copy of this consultant's report, due 28 to 30 months after the March 2005 effective date of the IAA, will be furnished to the SCO and the Air Force. Within two months of the issuance of this report, Boeing will provide to the same parties a submission identifying the changes in policies and procedures, if any, that Boeing has implemented, or will implement, in response to the report.

### **IV. MANAGEMENT INVOLVEMENT**

Boeing has increased management oversight of ethics and compliance related matters in order to improve the company's overall ethics and compliance program.

**A. Establishment of Boeing Office of Internal Governance.** In November 2003, Boeing established the Office of Internal Governance ("OIG") reporting to the



CEO. Intended to elevate the visibility of activities related to ethics and compliance, the OIG reports regularly to the Boeing Executive Council and Board of Directors.

**B. Establishment of IDS Compliance Review Board and Compliance Assessment Team.** Concurrently with establishment of OIG, Boeing Integrated Defense Systems (“IDS”) took proactive measures by establishing the Compliance Review Board (“CRB”) and Compliance Assessment Team (“CAST”). CRB, chaired by the IDS President, with membership drawn from senior IDS general management and functional area heads, meets quarterly to receive reports from CAST and to address ethics/compliance issues brought to its attention, including appropriate systemic correction of compliance issues as they arise. CAST, co-chaired by the IDS Vice Presidents of Ethics and Program Management, meets monthly and is responsible for maintaining robust compliance processes and procedures.

**C. Ethics and Business Conduct Committee (“EBCC”).** This committee includes Boeing’s President and CEO, his direct reports on the Executive Council and the Vice President of Ethics and Business Conduct. Recognizing the importance of setting “tone at the top,” the EBCC’s quarterly meetings provide a forum in which the principal leaders of Boeing discuss ethical leadership, ethical culture and data. The ethics strategy has been revised, with a focus on facilitation of management’s ownership of the ethical culture and embedding ethics as a cultural trait within the company’s businesses.

**D. Coordination with Law Department.** There is a monthly meeting among Boeing’s General Counsel, the IDS President and CEO and the OIG Senior Vice President to identify matters bearing on Boeing’s present responsibility.

**E. Boeing Code of Conduct and Employee Certification.** In January 2004, Boeing’s Chairman and Boeing’s President and Chief Executive Officer instructed all managers to have each employee under their supervision to read the Boeing Code of Conduct and execute an Employee Certification confirming that they understood and would comply with the Code, with instruction that no employee, including the Chairman was exempt from this process. All employees were also required to sign the Code of Conduct certification in 2005 and 2006.

**F. Consolidation of Ethics Personnel and Activities.** Boeing has created a consolidated organizational structure under which all Ethics Advisors report on a solid line basis to World Headquarter’s Vice President, Office of Ethics and Business Conduct (“Ethics”), who in turn reports to the Senior Vice President, OIG. This eliminated potential conflicts from diverse organization reporting relationships.

**G. Enhancement of Opportunities for Ethics Advisors.** Boeing has enhanced long-term career opportunities of Ethics Advisors and has more than doubled staffing in the United States. In addition, Boeing has begun staffing international locations with Ethics Advisors. All Ethics Advisors are now full time.

## **V.     HIRING OF CURRENT OR FORMER GOVERNMENT EMPLOYEES**

Significant improvements have been made in the procedures for the recruitment and hiring of government personnel, including executive hires.

### **A.     Human Resources Process and Practice Enhancement.**

1.     Boeing has made organizational changes to its Human Resources Department to ensure that the processes and practices are aligned and consistently applied company-wide. Enhanced procedures define the responsibilities of all Boeing organizations in the hiring and recruiting process and establish the oversight and monitoring role of all recruitment and hiring actions, including pre-employment contingencies and employee orientation. These procedures are PRO-4825 “Recruitment and Hiring of Current and Former Government Employees – Conflict of Interest” (revised August 2005), PRO-6383 “Hiring and Assigning Individuals Previously Employed by a Competitor – Conflict of Interest” (Revised May 2004), PRO-6477 “Filling a Job Opening” (new procedure, published in December 2005), and PRO-2313 “Recruitment and Employment” (under revision).

2.     New hiring controls have been implemented. Implementation of the above-referenced requirements is supported by the Boeing Enterprise Staffing System (“BESS”), which contains internal controls that ensure company policy will be followed when hiring current or former government employees by preventing progress to the next stage of the hiring process unless the prior stage requirements have been completed. For example, BESS requires external applicants to complete the Government Conflict of Interest (COI) questionnaire before they can apply for posted jobs and, if necessary, go through a legal review before being made available to hiring managers for interviews. Only Global Staffing can extend job offers on requisitions posted through BESS. BESS requires hiring managers to complete Government COI training on an annual basis in order to participate in the hiring process.

3.     Reviews are conducted by the Law Department before employees with ongoing COI monitoring change jobs. Global Staffing submits a monthly report on all employees with ongoing COI monitoring who changed jobs or classifications within the previous month and whether a legal review was conducted. The HR system was modified in May 2005 to preclude any job change for an employee with ongoing COI monitoring without a corresponding legal review, correcting a flaw that would allow an employee with ongoing monitoring to be reclassified or reassigned without a legal review.

4.     Personnel files have been centralized in an electronic database called Personnel Records Link. HR Central Records also added a database to track the receipt of all essential documents for all new hires, identifying any missing documents that need to be collected.

**B. Revised Procedure for Recruiting and Hiring Current and Former Government Employees.**

1. On September 24, 2004, Boeing adopted PRO-4825, a revised conflict of interest procedure for the recruiting and hiring of current and former government employees.

2. Once either Boeing or a person not employed by Boeing (or someone representing or acting on behalf of either) has “expressed an interest” regarding current or future employment or a contract labor assignment by Boeing, a four-question Government COI form must be completed. If the applicant answers “Yes” to any of the four questions, the applicant must complete a full Government Conflict of Interest Questionnaire, an initial screening must be performed, and a written conflict of interest review must be completed by the Law Department, as required, before Boeing engages in an “employment discussion.” A person has expressed an interest in possible employment with Boeing if that person, or someone representing or acting on behalf of that person, has provided a written communication (including an email message) expressing such interest or has expressed such interest to a representative of Boeing in person or by telephone. An “employment discussion” is broadly defined to mean any direct or indirect communication between a Boeing employee and a person not employed by Boeing (or someone representing or acting on behalf of either) regarding current or future employment.

3. The improved full Conflict of Interest Questionnaire (form F7 10000027) (28 May 2004) includes the following pertinent questions:

12. Do you currently have responsibilities on behalf of the U.S. Government for matters involving Boeing?

13. Are you now participating personally and substantially on behalf of the U.S. Government in a federal agency procurement using competitive procedures in which Boeing is a bidder or offeror and in which you are involved directly or indirectly (including supervising a subordinate), in (a) drafting, reviewing or approving the specification or statement of work for the procurement; (b) preparing or developing the solicitation; (c) evaluating bids or proposals, or selecting a source; (d) negotiating the price or terms and conditions of the contract; (e) reviewing and approving the award of the contract?

4. If question 12 is answered “Yes,” Boeing cannot consider the individual for possible employment until the individual (1) files a “Disqualification Notice” with the individual’s U.S. Government agency (and provides Boeing with a copy showing approval by the individual’s U.S. Government supervisor or Designated Agency Ethics Official (“DAEO”)), which states that while the individual is seeking employment with Boeing, the individual will not act on behalf of the U.S. Government on any matters involving Boeing; or, (2) the individual provides a written opinion from the individual’s

agency's DAEO which states that, due to the nature of the individual's Government job responsibilities, a disqualification notice is not required to be filed by the individual.

5. If question 13 is answered "Yes", Boeing cannot consider the individual for possible employment at this time. Boeing will be able to consider the individual for possible employment only (1) when the individual discontinues all involvement in the procurement covered by question 13, by filing a required "contact report" and "disqualification notice," and by providing copies of those documents to Boeing which show approval by the appropriate U.S. Government official; or, (2) when the procurement has been cancelled; or, (3) when a contract for the procurement has been awarded.

6. A written conflict of interest review must be performed by the Law Department before engaging in an "employment discussion" with certain designated categories of candidates, including a person who is a current U.S. Government employee or whose U.S. Government service ended within the past 5 years and who is or was a military officer, or a U.S. Government civilian employee paid at a rate of pay equal to or greater than the base rate of pay for a grade GS-7, step 1.

7. Anyone acting on behalf of Boeing is prohibited from engaging in an "employment discussion" with a present or former U.S. Government employee unless authorized by Human Resources.

## **VI. PROCUREMENT INTEGRITY**

Although policies and processes have always required compliance with statutory and regulatory requirements, Boeing policies and procedures have been significantly strengthened to ensure compliance with the Procurement Integrity Act, the Uniform Trade Secrets Act, the Economic Espionage and Theft of Trade Secrets Act, and the Stealing or Conversion of Government Property or Records law.

### **A. Procurement Integrity and Restriction on Use of U.S. Government and Third Party Proprietary Information in U.S. Government Procurement.**

1. On November 10, 2004, Boeing issued revised PRO-70, which defines lawful acquisition and use of non-Boeing proprietary information to ensure compliance with the Procurement Integrity Act and related laws. It applies to all Boeing employees, consultants and contingent labor who may come in contact with third party proprietary information. Additional modifications to PRO-70 are being considered.

2. Each employee and consultant who is involved in a U.S. Government procurement and proposal effort must be familiar and comply with the prohibitions in the Procurement Integrity Act, the implementing regulations, related laws and PRO-70.

3. Under PRO-70, employees and consultants must accept or receive information only from sources believed to be authorized to provide that information and only if there is no doubt about the company's right to receive and use that information in the particular U.S. Government procurement. This requirement applies to information received directly or indirectly and regardless of the form in which the information is received (oral, written or electronic). It also applies to information which may not be marked with a restrictive legend but which otherwise may qualify as restricted information.

4. Whenever reasonably necessary in order to demonstrate the proper receipt of information, employees and consultants must document receipt of the information sufficiently to demonstrate the propriety of the receipt and note any use restrictions or limitations. A special form -- Documentation Trail Form for U.S. Government Procurement Related Information -- is provided for this purpose.

5. If, during the course of a U.S. Government procurement, an employee or consultant receives a document or information of any kind having a restrictive marking which raises doubt as to the company's right to receive or use the information, or the nature or circumstances of receipt are such as to raise a doubt, that document or information must be immediately sealed and provided directly to Ethics or the Law Department for further investigation. The Law Department will ensure that notification is made to the appropriate level of business management. If warranted by the results of the investigation, a report concerning the violation or possible violation of the Procurement Integrity Act or related laws will be made to the Government.

6. Under PRO-70, if an employee or consultant has personal knowledge or evidence of a violation of the Procurement Integrity Act or related laws, it is the responsibility of that person promptly to report that knowledge or provide that evidence directly to Ethics or the Law Department.

7. PRO-70 reiterates that employees and consultants must not discuss potential Boeing employment with any current or former U.S. Government employee without receiving clearance from Human Resources before the discussion takes place.

**B. Proposal Team Brief.** For all competitive U.S. Government proposals subject to the Procurement Integrity Act, all capture and proposal teams must receive the Proposal Team Brief, which explains the rules related to competition-sensitive third party and U.S. Government information.

**C. Controls on Team Composition.** For competitive U.S. Government procurements valued over \$500 million, the program/capture manager must maintain a roster of the capture/proposal team. Before anyone can be added to the team, individuals are required to certify (i) completion of the Proposal Team Brief, and (ii) that they have not assisted a Boeing competitor within the last three years on the same or a directly related procurement (see paragraph F below), and (iii) and that they will comply with all applicable laws and Boeing policies and procedures. HR makes the employee's pre-

Boeing work history available on-line, and each employee who has been continuously employed by Boeing for less than three years has a badge indicator of “N” to visually cue the proposal manager to check the employment history.

**D. Compliance Checklist.** For U.S. Government procurements exceeding \$500 million, program/capture managers must provide a compliance checklist and verify that (1) no team members have assisted a Boeing competitor within the last three years on the same or a directly related procurement, (2) team members have met training and certification requirements, and (3) the proposal does not contain and is not based on information that was obtained improperly.

**E. Proprietary Information Certification Requirement.** Since September 22, 2003, all new Boeing hires have been required to go through an employee orientation that includes, as a condition of employment, certification that the new hire (1) does not possess any proprietary information that is confidential to or owned by a former employer or other third party (“proprietary information”); (2) will not attempt to obtain any third party proprietary information while a Boeing employee, except in accordance with relevant law and established Boeing procedures; and (3) will not use or disclose any other company’s proprietary information while a Boeing employee.

**F. Avoiding Appearance of Impropriety on Hiring of Persons Previously Employed by Competitor.** On May 28, 2004, Boeing issued PRO-6383 (“Hiring and Assigning Individuals Previously Employed by a Competitor - Conflict of Interest”). The procedure is designed to prevent the “appearance of impropriety” which is defined as a situation in which Boeing personnel participating on a competitive U.S. Government procurement with a value expected to exceed \$500 million have worked for another company in certain capacities on a proposal in competition with Boeing and where the current Boeing matter covers the same or a directly-related procurement action. Under PRO-6383, (i) individuals will not be assigned to a “key position” with a “covered team” if the assignment creates an appearance of impropriety, (ii) prior to assigning individuals to a key position, their employment history will be checked to determine if they were involved in an assignment with a prior employer that might create an appearance of impropriety, and (iii) Boeing Staff/Employment will obtain certification from potential team participants acknowledging the company requirement to exclude them from participation on a covered team where they have assisted with a competing proposal from another company for the same or a directly-related procurement action within the past three years.

**G. Specific Protective Measures Related to EELV.** In the IAA, the Air Force and Boeing agreed to specific protective measures relating to all EELV competitions to eliminate any concern that those competitions may be tainted by the events related to the EELV Matter. These protective measures are set forth in Exhibit E-1 to the IAA.

## VII. EMPLOYEE TRAINING

The enhanced ethical compliance programs are reinforced through extensive training.

**A. New Hires.** Modified procedures and processes require employee certification regarding proprietary information, the viewing of an updated ethics video, and receipt of an ethics and business conduct guideline book. Similar measures are in place for consultants and contingent labor.

**B. Recombitment Day Events.** Ethics Recombitment Days have been conducted yearly and are led by the business units in conjunction with Ethics, with significant management involvement.

**C. Ethics Challenge.** Boeing conducts an annual mandatory ethics training -- the Ethics Challenge -- that has been modified to use actual Boeing ethics cases.

**D. Additional Training for Managers.** Additional training in the form of the Ethics Resource Information for Managers has been developed to help managers fulfill their ethics leadership responsibilities. Manager training includes segments on what to do in ethics investigations and Boeing's non-retaliation policy for employees who disclose ethical violations. All managers must also complete the Government COI training on an annual basis. In addition, ethics components have been added to training courses provided at the Boeing Leadership Center, the Company's corporate training facility.

**E. Training of Ethics Advisors.** A number of training events are conducted to ensure Ethics Advisors are competent in their roles and continue to develop their skills.

**F. Training on Protection of Proprietary Data.** A new, separate training course has been developed to specifically address the important area of protection of proprietary data.

## VIII. LAW DEPARTMENT

The Law Department has enhanced procedures for internal compliance with statutory and regulatory requirements.

**A. Consistent Enterprise-wide Investigation Procedures.** The Law Department has established mandatory investigation procedures on a company-wide basis. The investigation procedure consists of two prongs. First, all company organizations must refer certain matters to the Law Department. Second, all investigations handled by the Law Department are carried out in a consistent manner.

**B. Mandatory Referral Process (PRO-6419).** PRO-6419 was issued on May 20, 2004, to ensure that all organizations within Boeing treat "Potentially Significant

Allegations” (“PSA”) in a consistent manner. A PSA matter is defined as an accusation or report that involves a suspected violation of law or policy which, if confirmed, could cause substantial harm to the business or reputation of the Boeing Company. All PSA matters coming to the attention of a company organization or any employee must be referred to the Law Department, so that it can decide if it will investigate the matter under its procedures.

**C. Internal Investigation Procedures.** The Law Department has established an internal Business Process Instruction that sets forth the procedure for conducting internal investigations in order to ensure the consistent and effective handling of investigations. The Law Department has also established a separate investigation procedure for potential Procurement Integrity and third party proprietary data investigations. Key features of this procedure require: (1) the collection and segregation of suspect documents or information; (2) return of proprietary documents to their apparent owner or originator; and (3) in appropriate circumstances, notification to the procuring agency of a possible violation of the Procurement Integrity law.

**D. Chief Counsel of Investigations.** Boeing has created the post of Chief Counsel, Investigations, to oversee all Law Department internal investigations.

## **IX. REPORTING**

The IAA requires periodic reports from the Boeing Senior Vice President, OIG, to the Air Force, including the following:

- (1) a description of standards of conduct/ethics/compliance training conducted by Boeing, and the number of persons who attended;
- (2) notification of initiatives relating to the Ethics and Business Conduct Program, including the status of all remedial measures Boeing has committed to implement in the IAA;
- (3) the status of all (a) known ongoing criminal, civil and administrative investigations and proceedings conducted by any government entity with regard to any allegation relating to Boeing’s or its employees’ business integrity; (b) all investigations conducted by Boeing involving allegations of fraud or criminal offense; and (c) all other matters that Boeing’s General Counsel, its Senior Vice President of Internal Governance, or the IDS President determines may bear on the present responsibility of Boeing;



- (4) a report identifying all calls made to the confidential toll-free Ethics Line and all inquiries received by Boeing Ethics Advisors; and
- (5) a summary of any analysis Boeing has conducted regarding Boeing's Ethics and Business Conduct Programs.

## **X. CORPORATE AUDIT ROLE**

Boeing's Corporate Audit has a significant role in monitoring compliance with the remedial measures discussed above. That role includes (i) preparing Effectiveness Reviews of Audit's role in testing compliance with the IAA, and (ii) working with the SCO on Compliance Monitoring Plan actions.

**APPENDIX E**

**INTERIM ADMINISTRATIVE AGREEMENT**

**By and Between**

**The Boeing Company**

**and**

**The United States Department of the Air Force**

## TABLE OF CONTENTS

<u>Article</u>	<u>Page</u>
1. SUSPENSIONS .....	3
2. PERIOD OF THE AGREEMENT .....	3
3. ETHICS AND COMPLIANCE PROGRAM .....	4
4. SPECIFIC PROTECTIVE MEASURES .....	12
5. SPECIAL COMPLIANCE OFFICER .....	13
6. REPORTS .....	14
7. FUTURE ACTION .....	17
8. PROPOSED CHANGES .....	17
9. VOLUNTARY DISCLOSURES .....	18
10. LEGAL PROCEEDINGS .....	18
11. MEETINGS .....	18
12. DISCIPLINARY ACTION .....	19
13. ACCESS TO RECORDS .....	19
14. COSTS OF REVIEW .....	20
15. UNALLOWABLE COSTS .....	20
16. ADVERSE ACTIONS .....	22
17. STATUS OF SUSPENSIONS .....	22
18. NOTIFY EMPLOYEES .....	23
19. REORGANIZATIONS WITHIN BOEING .....	24
20. SALE OF BOEING BUSINESSES .....	24
21. COMPANY PURCHASE OF BUSINESSES .....	25
22. PRIVILEGES .....	25
23. RELEASE .....	25
24. PARAGRAPH HEADINGS .....	25
25. COUNTERPARTS .....	26
26. AIR FORCE RELIANCE .....	26
27. ENTIRE AGREEMENT .....	26
28. RESTRICTION ON USE .....	26
29. AUTHORIZED REPRESENTATIVE .....	27
30. SEVERABILITY .....	27
31. NOTICES .....	27
32. MODIFICATION .....	28

## Table of Exhibits

Exhibit A:	Letter from The Boeing Company to the U.S. Department of the Air Force Re Boeing Policies and Procedures Regarding DFARS 203.7001
Exhibit B:	Summary of Enhancements to Ethics/Compliance Policies, Programs and Procedures Since May 1, 2003
Exhibit C:	Summary of Boeing Leadership Center Core Program Course Revisions to Date
Exhibit D:	Implementation Plans for Recommendations from Independent Reviews of Senator Rudman, Ethical Leadership Group and William Ide
Exhibit E-1:	EELV-Specific Protective Measures (Delta Program, Proposal Team Firewall Requirements Procedure)
Exhibit E-2:	Document Certification
Exhibit F:	Special Compliance Officer Statement of Work
Exhibit G:	Letter from The Boeing Company to the U.S. Department of the Air Force Re Legal Proceedings
Exhibit H:	Boeing Estimate of Costs of Submissions to and Appearances before the Air Force
Exhibit I:	Boeing Estimate of Costs of Response to Notice to Partially Terminate
Exhibit J:	Boeing Estimate of Costs of Bringing Self Governance, Compliance and Ethics Program to Level Acceptable to Air Force
Exhibit K:	Boeing Estimate of Costs of Administering the Interim Administrative Agreement
Exhibit L:	Statement of Salary and Benefits for Terminated Employees

## **INTERIM ADMINISTRATIVE AGREEMENT**

This Interim Administrative Agreement ("Agreement"), effective this \_\_\_\_ day of \_\_\_\_\_, 2004, is made by and between The Boeing Company and the United States Department of the Air Force ("Air Force"). As used herein, "Boeing" means, without limitation, The Boeing Company's Integrated Defense Systems ("IDS"), Launch Systems, Boeing Launch Services, Delta Programs and all other operating divisions, units and wholly-owned subsidiaries of The Boeing Company, and all entities acquired or established by Boeing during the term of this Agreement.

### **PREAMBLE**

1. On July 24, 2003, the Air Force sent a Notice of Suspensions (the "Notice") to Boeing suspending Boeing's Launch Systems, Boeing Launch Services, and Delta Programs business units (the "cited Boeing units"), from future Federal Government contracting and from receiving, directly or indirectly, the benefits of Federal assistance programs.
2. The suspensions were based on facts set forth in the Memorandum in Support of Suspensions ("Memorandum") accompanying the Notice. The Memorandum sets forth Air Force findings and conclusions based on its review of the evidence it had compiled in an administrative record.
3. As stated in the Memorandum, the suspensions were based in part upon a pending criminal investigation into Boeing's alleged unlawful possession and use of a competitor's proprietary documents in connection with the competition for a United States Air Force Evolved Expendable Launch Vehicle ("EELV") contract, and the indictment of two former Boeing employees.

4. Boeing has undertaken to demonstrate that continued suspension or debarment of the cited Boeing units from future Government contracting is not a necessary protection in this case. To that end, on August 25, 2003, Boeing submitted to the Air Force its Response to the Notice and, since that date, has supplemented the Response through additional discussions with and submissions to the Air Force. Boeing has agreed to maintain its Ethics/Compliance policies, programs and procedures voluntarily adopted prior to the events described in the Memorandum, has already enhanced or has agreed to enhance those policies, programs and procedures as specified herein, and has committed to take other specific remedial measures as set forth herein to ensure that it possesses the high degree of business integrity required of a Government contractor.

5. The Air Force believes, and Boeing will not dispute, that Federal Acquisition Regulation ("FAR") 9.407 provides adequate bases for the continuation of the present suspensions of the cited Boeing units. The Air Force has, however, determined that Boeing has implemented and committed to implement appropriate remedial measures as reflected in the terms and conditions of this Agreement to assure the Air Force that Boeing's future dealings with the Government will be conducted responsibly while the indictment and civil and criminal investigations are pending, and that the suspended Boeing units may be restored to eligibility for Government contracts and Federal assistance programs pending resolution of the indictment and investigations at issue here, subject to the rights of the Air Force to take appropriate action pursuant to this Agreement. By entering into this Agreement, the Air Force is not determining that Boeing is presently responsible for any specific Government contract. Boeing and the Air Force, therefore, agree to the terms and conditions set out below.

## ARTICLES

1. SUSPENSIONS. The suspensions referenced in the Notice will be promptly terminated, without prejudice, following execution of this Agreement by the Air Force.

2. PERIOD OF THE AGREEMENT. The Agreement shall become effective upon its execution by the Air Force. At the date of execution of this Agreement, the period of the Agreement is indefinite. The period may become fixed in the future, however, by operation of this Article 2.

a. If Boeing is either not charged with, or is acquitted of criminal offenses relating to the matters set out in the Notice and Memorandum, the terms and conditions of this Agreement shall continue in force and effect and the period of the Agreement shall be fixed as three years from the date of the execution of this Agreement by the Air Force.

b. If Boeing is charged with, or convicted of a criminal offense, or a civil judgment is obtained against Boeing by the Department of Justice ("DOJ"), relating to any of the matters described in the Notice and Memorandum, the period of this Agreement will not become fixed, but the Air Force will reconsider the need for the suspension or debarment of Boeing in light of all information then available. During any such period of reconsideration, the terms and conditions of this Agreement will remain in effect, except that the Air Force may unilaterally initiate proceedings to suspend or debar Boeing, unless, prior to the initiation of such proceedings, Boeing is acquitted of all charges and all indictments and DOJ civil actions are dismissed.

c. As used herein, the term "Agreement" shall mean this Interim Administrative Agreement and any fixed-period agreement that may follow pursuant to this Article 2.

3. **ETHICS AND COMPLIANCE PROGRAM.** Boeing has implemented and agrees to maintain its Ethics/Compliance policies, programs and procedures, as more fully described in Exhibit A. Boeing has enhanced or has agreed to enhance such policies, programs and procedures as described below, and as summarized in Exhibit B.

a. **General Ethics and Compliance Policies and Procedures.** Boeing has had and continues to have in place Ethics/Compliance policies, programs, procedures and training, implemented through a substantial supporting infrastructure, that govern its general business ethics and conduct. Boeing's Policy-2, Ethical Business Conduct, sets forth Boeing's guiding principles and standards for ethical business conduct and integrity and establishes the responsibility of individual employees to adhere to those principles and to comply in full with all applicable laws and regulations. This policy is implemented in Boeing's Procedure-3, Ethics and Business Conduct Program.

b. **Management Involvement and Overall Integration of Ethics/Compliance Program.**

(i) **Boeing Office of Internal Governance.** As of November 11, 2003, Boeing established an Office of Internal Governance, headed by a Senior Vice President who reports directly to the Chief Executive Officer. This Office will have responsibility for Ethics, Internal Audit, Import-Export Compliance, the Compliance Assessment Process, oversight of the International Services Contractor process and Foreign Sales Consultants and other closely-regulated matters.

(ii) **IDS Compliance Assessment Team and Compliance Review Board.** IDS has established an institutional mechanism for senior management to regularly oversee and raise



questions on compliance issues and to ensure follow-up on resulting corrective actions.

Specifically, IDS has taken the following steps.

(a) IDS has established a "Compliance Assessment Team," chaired by the Vice President, IDS Ethics, to be responsible for establishing and executing robust compliance processes and procedures consistent with the Compliance Assessment Process ("CAP"), a program established by Boeing Procedure-3175 and designed to assure that Boeing has effective programs in place to prevent and detect violations of law and regulation. The Team will accomplish this by reviewing substantially all compliance-related allegations and investigations, gathering other data, providing analysis of data, providing descriptions of strategies and initiatives to create improvements generated by Boeing's Process Councils, and assessing and recommending infrastructure changes supportive of the foregoing objectives. This Team will meet on a regular basis and be comprised of senior representatives of IDS's businesses and functional areas. The Team will report quarterly to the "Compliance Review Board" discussed below.

(b) IDS has established a "Compliance Review Board," chaired by the IDS President and with membership drawn from senior IDS general managers and functional area heads (all of whom are "direct reports" to the IDS President). The Board will meet quarterly in person to receive reports from the above-referenced Compliance Assessment Team and to address ethics/compliance issues brought to its attention by the Team and other sources within IDS. The responsibilities of the Board include (a) making certain that the Team is meeting its objectives of properly sharing and responding in an integrated fashion to ethics/compliance issues and actions generated by the Compliance Assessment Process, (b) ensuring that risk areas have been properly identified and prioritized, (c) assessing whether IDS's

ethics/compliance processes are effective, (d) analyzing ethics/compliance trends, (e) evaluating "lessons learned" from any incidents of ethical misconduct, (f) identifying and following up on corrective actions and policies as needed to ensure the continued effectiveness of the Ethics/Compliance program, and (g) receiving regular reports from the Compliance Assessment Team and others on the details and status of all significant compliance-related allegations and investigations, including the disclosures and non-disclosures of such allegations and investigations that have and have not been made to the Government and to others outside of Boeing. The Board, in turn, will report quarterly on significant allegations and investigations, and on ethics/compliance matters to the IDS Leadership Team, which consists of vice presidents and general managers of IDS business units and direct functional reports to the IDS President, and to Boeing's CEO.

(iii) Boeing Code of Conduct and Employee Certification. In January 2004, the Boeing Chairman and President and Chief Executive Officer instructed all Company managers to request that all Boeing employees under their supervision read the Code of Conduct and then sign an Employee Certification confirming that they understood and would comply with the Code. Managers were directed to distribute the Code and Certification and communicate with their staffs to emphasize the Company's commitment to integrity, to answer any employee questions and to address any related concerns. All Boeing employees – including the Chairman, members of the Executive Council, all other executives, and all managers and employees – engaged in this process. Boeing's Senior Vice President, Office of Internal Governance, and Vice President of Ethics provided specific information and instruction to the managers, including an explanation of the process and the managers' role, presentation materials and a set of questions and answers.

c. **Marketing Policies and Procedures.** Boeing also has promulgated procedures that govern marketing in general and marketing to the Government in particular. Such procedures include Procedure-4, Proper Marketing Practices, and Procedure-5, Proper Marketing Practices-Marketing to the U.S. Government. As of October 31, 2003, Boeing issued enhancements to these marketing procedures, respectively, (1) to require that new employees disclose any previous employment relationship with a Boeing competitor and (2) to describe the specific procedures that must be followed to determine the propriety of receipt and/or use of Government, third-party proprietary or competition-sensitive information.

d. **Procurement Integrity.** Boeing has revised its procedures to address further the requirements of and the necessity for employees to comply with the Procurement Integrity Act ("PIA") and its implementing regulations, as well as related statutory and regulatory mandates. Specifically, effective August 5, 2003, Boeing issued a revised and strengthened Procedure-70, Procurement Integrity, to, among other things, (i) incorporate requirements to comply with the provisions of the Economic Espionage/Theft of Trade Secrets Act, the Stealing or Conversion of Government Property or Records Act, and the Uniform Trade Secrets Act, (ii) strengthen the requirements for employee reporting of potential PIA violations, and (iii) specify that the Law Department would notify an appropriate level of business management of its investigations of possible PIA violations and their outcome.

e. **Ethics/Compliance Training**

(i) Boeing has a long-standing Ethics/Compliance training program for new and existing employees.

(ii) Beginning on August 27, 2003, Boeing instituted a review of the curriculum of its core leadership programs at the Boeing Leadership Center – which already

contained ethics/compliance components -- to consider revisions to those programs to further strengthen their ethics content, including, for example, by addressing the issues raised by the EELV and Exoatmospheric Kill Vehicle ("EKV") incidents addressed in the Memorandum. Exhibit C summarizes the revisions made to date in the BLC's core programs as a result of that review.

(iii) Boeing will continue to use its Compliance Assessment Process to evaluate the efficacy of the procedures and training programs designed to ensure protection of third-party information. In that regard, for the 2004 Compliance Assessment Process, Boeing will expand the procurement integrity Compliance Risk Area beyond PIA to include the Economic Espionage/Theft of Trade Secrets Act, the Stealing or Conversion of Government Property or Records Act, and the Uniform Trade Secrets Act.

(iv) IDS held an "Ethics Recommitment Day" and associated training sessions on July 30, 2003, for 70,000 Boeing employees. Boeing has provided the Air Force with copies of the materials presented or used during this training. Boeing will conduct similar company-wide events in 2004 and, thereafter, evaluate the need for and content and format of further events. But IDS will conduct similar events on an annual basis.

(v) IDS will provide to competitive assessment and capture teams the same training regarding procurement integrity as that provided to proposal teams at the time each such team is formed. IDS has also implemented or will implement additional procedures in response to recommendations 7, 11 and 12 made by former Senator Warren Rudman in his report referenced in Article 3.h.(i).

(vi) IDS also has revised its training materials to (a) reemphasize the requirement for employees to report all potential violations to the Law Department or Ethics

Office, (b) address requirements imposed by the Economic Espionage Act/Theft of Trade Secrets Act, the Stealing or Conversion of Government Property or Records Act and the Uniform Trade Secrets Act and (c) cover additional requirements contained in United States Department of Defense regulations addressing the release of procurement-related information.

(vii) Boeing has improved, and commits to further improve its Ethics Office in a number of respects. In January 2004, Boeing Ethics Advisors began directly reporting through a centralized Boeing World Headquarters organization headed by Boeing's Vice President of Ethics, who reports to the Senior Vice President, Office of Internal Governance, who reports directly to Boeing's Chief Executive Officer. Further, Boeing will within one year from the date of this Agreement revise its Ethics program so that all Ethics Advisors will serve as ethics advisors on a full time basis.

f. **Hiring and Employment Policies and Procedures.**

(i) As of September 2, 2003, Boeing revised its policies and procedures applicable to hiring and employment in the following respects: (a) each offer letter places the offeree on notice that he/she must not bring proprietary or confidential documents or information to Boeing and that the offer of employment is conditioned on the offeree certifying in writing that he/she does not improperly possess any confidential or proprietary information; (b) as a condition of hire, each new employee will be required to sign a certification that he/she (1) does not possess any proprietary documents (either hard copy or electronic) of other companies; (2) will not attempt to obtain any materials or information from other companies except in accordance with relevant law and established Boeing procedures; and (3) will not obtain or reveal any other companies' proprietary information while a Boeing employee; (c) a revised ethics training module has been implemented for new employees that includes a video message

from Boeing's executive management concerning Boeing's commitment to ethics; and (d) a revised Intellectual Property and Confidentiality Agreement has been prepared to specifically prohibit possession or use of third-party proprietary information.

(ii) With respect to consultants, Boeing is reviewing (and, as appropriate, revising) its standard consultant agreement and related procedure to ensure that those documents are clear that consultants are subject to the same ethics/compliance requirements as employees.

(iii) With respect to contract labor, Boeing is reviewing (and, as appropriate, revising) its standard forms for engagement of contract labor and related procedure to ensure that those documents are clear that contract labor is subject to the same ethics/compliance requirements as employees.

g. **Law Department Internal Investigation Policies and Procedures and Other Remedial Measures.**

(i) The Boeing Law Department has adopted, as of September 12, 2003, revised procedures for investigations of potential PIA violations, and has provided a copy of such procedures to the Air Force.

(ii) The Law Department has used the foregoing revised procedures for potential PIA violations as the basis for its internal investigation procedures, and has implemented substantially similar procedures for all internal investigations.

(iii) The Law Department held a training "Stand-down" on October 1, 2003, for all Law Department attorneys and paralegals to train the legal staff in the new internal investigation procedures, review the "lessons learned" from the incidents described in the Notice and Memorandum and discuss additional ways in which the Department's procedures might be modified to support more effectively the Ethics/Compliance program.

(iv) Boeing retained an independent consultant to conduct a review of the Boeing Law Department's internal investigation policies and procedures, to include a review of the portals through which the Law Department becomes aware of matters to be investigated. The consultant has provided a report to the Air Force and to the Boeing Board of Directors, and Boeing has provided a report to the Air Force setting forth the changes in policies and procedures that Boeing has implemented, or will implement, in response to the consultant's report. (Ex. D)

h. Outside Ethics/Compliance Reviews.

(i) Boeing retained former Senator Warren Rudman to undertake an independent review of its ethics/compliance procedures and policies relating to the treatment of sensitive or confidential competitor information. Boeing has provided this report to the Air Force, as well as a submission identifying the changes in policies and procedures that Boeing has implemented, or will implement, in response to and/or in addition to the recommendations of the review. (Ex. D)

(ii) Boeing retained former Senator Warren Rudman to undertake an independent review of its ethics/compliance procedures and policies relating to Boeing's recruiting, hiring and employment of government employees. Boeing has provided this report to the Air Force, as well as a submission identifying the changes in policies and procedures that Boeing has implemented, or will implement, in response to and/or in addition to the recommendations of the review. (Ex. D)

(iii) Boeing retained the Ethical Leadership Group to conduct an outside, independent review of Boeing's policies and procedures relating to ethics/compliance generally and has provided the results of this review to the Air Force, as well as a submission identifying

the changes in policies and procedures that Boeing has implemented, or will implement, in response to and/or in addition to the recommendations of the review. (Ex. D)

(iv) Boeing will retain a consultant (acceptable to the Air Force) to conduct an additional outside, independent review of its ethics and compliance policies and procedures, and will provide a copy of the report of its review, and recommendations, to the Air Force between twenty-eight and thirty months following the effective date of this Agreement. Within two months of the issuance of the report, Boeing will provide to the Air Force a submission identifying the changes in policies and procedures, if any, that Boeing has implemented, or will implement, in response to the report.

4. **SPECIFIC PROTECTIVE MEASURES.** In addition to the foregoing initiatives addressing its overall ethics/compliance policies, programs and procedures:

a. IDS has implemented and will continue to implement specific protective measures relating to all EELV competitions to eliminate any concern that such competitions may be tainted by the events set forth in the Memorandum. Exhibit E-1 sets forth these protective measures initiated by Boeing in order to preserve the integrity of future competitions. In drafting these measures, Boeing sought, received and in many cases incorporated comments from the Air Force's Space and Missile Systems Center ("SMC"). The Air Force considers Boeing's commitment to these measures and willingness to accept comments from SMC, along with other factors, as evidence of Boeing's present responsibility. Boeing represents to the Air Force that it has implemented these protective measures.

b. Boeing has undertaken and will continue to undertake good faith efforts as detailed and certified in Exhibit E-2 to identify, collect and secure or destroy possibly tainted competitive cost or pricing information.



## **5. SPECIAL COMPLIANCE OFFICER**

a. Boeing has, at its expense, appointed an independent "Special Compliance Officer" ("SCO"), acceptable to the Air Force, to oversee Boeing's implementation of the measures outlined in this Agreement. The SCO will develop (in coordination with Boeing) a Compliance Monitoring Plan ("CMP") and submit it to the Air Force for approval within sixty (60) days of the execution of the Agreement. The SCO will report to Boeing management and the Air Force on the SCO activities and Boeing's compliance with the Agreement within sixty (60) days of the Air Force's approval of the CMP, each month thereafter for the first year of this Agreement and quarterly in subsequent years of the Agreement. Exhibit F sets forth the statement of work for the SCO.

b. The SCO's periodic reports under Article 5.a above will include the SCO's identification of all Boeing competitive U.S. Government proposals greater than \$500 million, and of all Boeing proposals in U.S. Government "competitive procurements" (as defined in Ex. E-1) for launch vehicles or launch services regardless of amount, submitted during the reporting period and the SCO's certification as to those that were and those that were not prepared in accordance with Boeing's policies and procedures for the preparation of such proposals. In the event the SCO certifies to Boeing's non-compliance with its policies and procedures, the SCO will report such non-compliance promptly in accordance with section 4.2.3 of the SCO's statement of work.

c. Between four and six months after Air Force approval of the CMP, the SCO will provide an initial independent report of Boeing's compliance activities to the Air Force and Boeing's CEO. This report will describe the SCO's activities and Boeing's compliance activities

for the period covered by the report. The report will also propose, in coordination with the Air Force and Boeing, any changes to the CMP the SCO believes to be appropriate.

d. Between three and five months prior to the expiration of the Agreement (or a date otherwise established by the Air Force), the SCO will provide a final independent report of Boeing's compliance activities to the Air Force and Boeing's CEO. This report will describe in detail the SCO's activities since the SCO's engagement and the extent to which Boeing has complied with the Agreement since its effective date based on the SCO's experience with the CMP through the date of the report.

e. The Air Force and Boeing recognize that there will be a need for the SCO and some members of his team to have security clearances in order to perform the monitoring functions specified in this Article 5.

6. **REPORTS.** Within sixty (60) days of the execution of this Agreement, and each month thereafter for the first year of this Agreement, and quarterly in subsequent years of the Agreement, the Boeing Senior Vice President, Office of Internal Governance, shall submit a written report to the Air Force describing the measures taken by Boeing during the reporting period to ensure compliance with the Agreement. The reports will be submitted in time to be received at the Air Force within ten (10) days of the end of the month being reported, or within twenty (20) days of the end of the last month of the quarter being reported. Boeing's failure to meet these requirements on or before the dates agreed to shall constitute a material breach of the Agreement. The reports shall include:

a. A description of standards of conduct/ethics/compliance training conducted by Boeing, and the number of persons who attended.

b. Notification of initiatives relating to the Ethics and Business Conduct Program, including the status of all remedial measures Boeing has committed in this Agreement to implement.

c. The status of all (i) known ongoing criminal, civil and administrative investigations and proceedings conducted by any government entity with regard to any allegation relating to Boeing's or its employees' business integrity; (ii) all investigations conducted by Boeing involving allegations of fraud or criminal offenses by (a) Boeing employees and/or consultants for the benefit of Boeing where there is evidence of possible willful misconduct or (b) Boeing subcontractors in connection with obtaining or performing a subcontract under a Boeing U.S. Government prime contract or subcontract where there is evidence of possible willful misconduct by the subcontractor; and (iii) all other matters that Boeing's General Counsel, its Senior Vice President of Internal Governance, or the IDS President, determines may bear on the present responsibility of Boeing. The content of the reports contemplated in Articles c.(i) -- (iii), as well as Articles 6.d and 6.f below, are subject to considerations of the attorney-client and attorney work product privileges, any court orders limiting such communications and restrictions on disclosures for national security reasons. Such considerations may affect the content of the reports, but will not obviate Boeing's obligation to include such matters in its reports to the Air Force.

d. A report identifying all calls made to the confidential toll-free Ethics Line and all inquiries received by Boeing Ethics Advisors (regardless of subject matter), including without limitation all inquiries and formal investigations as entered into the Ethics Administration System. Such reports shall identify such calls and inquiries by the categories and subcategories currently used by Boeing, provide the ongoing status of the matter and describe the final

resolution of the matter. Matters pending resolution at the end of a reporting period shall be reported in each subsequent report until final resolution of the matter is reported. The parties will review this reporting requirement six months after execution of this Agreement to determine its continued necessity. Absent agreement by both parties, in writing, the reporting requirement will continue as set forth herein.

e. The status of the criminal case and criminal and civil investigations referenced in the Preamble hereto.

f. A list of all voluntary disclosures regarding export compliance made by Boeing to the Departments of State and/or Commerce during the reporting period.

g. In addition to the reports and information identified above, Boeing will notify the Air Force promptly upon Boeing management first learning of any of the proceedings set out in Article e.(1) above. Boeing will at the time of the initial notice of such matters, and thereafter at the Air Force's request, provide the Air Force with available information Boeing has reasonably determined to be accurate to allow the Air Force to assess the potential impact of the investigation or matter upon the present responsibility of Boeing for Federal Government contracting. Failure of the Air Force to request further detailed information will not negate Boeing's obligation to periodically report on the status of investigations and proceedings as required by Article e.(5).

h. During the term of this Agreement, Boeing's Office of Internal Governance will provide the Air Force with a summary of any analysis it has conducted regarding Boeing's Ethics and Business Conduct Programs.

**7. FUTURE ACTION.**

a. If criminal charges are initiated by any government entity against any current Boeing employee for alleged wrongdoing in connection with the matters referenced in the Notice and Memorandum, or for any other misconduct relating to business integrity, Boeing will notify the Air Force within 10 days of learning of such criminal charges and immediately remove that employee from direct charge work on any Government contracts. Upon conviction, such employee(s) shall be terminated.

b. If Boeing becomes aware of newly-discovered facts as to the involvement of any current or former employee in alleged wrongdoing related to the EELV or EKV matters referenced in the Notice and Memorandum or of any other matter within the scope of the Central District of California's investigation of the EELV competition, or of any prosecutor's determination that any such employee is a target or subject of a criminal investigation related to such matters, Boeing will so notify the Air Force within 10 days of learning of such facts or determinations.

c. Boeing represents that it will continue to cooperate with the Department of Justice in its criminal and civil investigations and legal proceedings (i) in the C.D. California, in connection with the allegations set out in the Preamble of this Agreement, and related matters, and (ii) in the E.D. Virginia, in connection with the allegations involving Boeing's hiring of a former Air Force official in late 2002.

**8. PROPOSED CHANGES.** Boeing shall notify the Air Force of any proposed material changes in the Ethics/Compliance policies, programs and procedures referenced in Articles 3 and 4. No material change shall be implemented if the Air Force objects in writing within 10 days of such notification.

9. **VOLUNTARY DISCLOSURES.** It is not a requirement of this Agreement that Boeing participate in any Voluntary Disclosure Program. If, however, Boeing does so participate, during the term of this Agreement Boeing will provide to the Air Force copies of all such Disclosures not otherwise reported pursuant to Article 6.f. contemporaneously with the Disclosure to the Department of Defense Inspector General and/or other agencies. It is the intention of the Air Force that the requirements of this Agreement relating to required Disclosures by Boeing to the Air Force should not render involuntary a Disclosure made pursuant to any Voluntary Disclosure Program.

10. **LEGAL PROCEEDINGS.** Boeing represents to the Air Force that, to the best of Boeing's knowledge, Boeing is not now the subject of any criminal or civil investigation by, or involved in any criminal or civil litigation with, any Governmental entity within the scope of Article 6.c.(i), except as reported to the Air Force by letter dated September 18, 2004 (Ex. G).

11. **MEETINGS.**

a. Between three and five months after the effective date of this Agreement, and three months prior to its termination, the Boeing Chief Executive Officer will meet with the Air Force to discuss compliance with this Agreement. At least annually after the effective date of this Agreement, the IDS President shall meet with the Air Force to discuss compliance with this Agreement.

b. Boeing's Senior Vice President, Office of Internal Governance, IDS's Senior Vice President and General Manager, Air Force Systems, and a representative of the Law Department will meet at least quarterly with the Air Force to discuss compliance with this Agreement and other related matters.

12. **DISCIPLINARY ACTION.** Boeing has taken disciplinary action against certain current and former employees, identified to the Air Force in a letter dated October 7, 2003, for having violated Boeing's policies and procedures for the handling of proprietary information or for having otherwise not acted properly in connection with the EELV matter referenced in the Notice and Memorandum. Boeing shall not re-employ (in any capacity, including as an employee, consultant, contract labor or otherwise) any former employee identified in the October 7, 2003 letter as having been terminated.

13. **ACCESS TO RECORDS.**

a. In addition to any other right that the Air Force may have by statute, regulation, or contract, and that the SCO has pursuant to this Agreement and the SCO Statement of Work, the Air Force, the SCO, and their duly-authorized representatives may, solely and as reasonably necessary for the purpose of verifying and evaluating Boeing's compliance with the terms of this Agreement, examine Boeing's non-privileged books, records and other documents and supporting materials.

b. The materials described above shall be made available by Boeing at all reasonable times for inspection and audit.

c. For the purposes of subparagraph a. of this Article, the Air Force, the SCO or their authorized representatives may interview any Boeing employee, who consents to be interviewed, at the employee's place of business during normal business hours or at such other place and time as may be mutually agreed between the employee and the interviewer. Consistent with Boeing policy, employees may elect to be interviewed with or without their own counsel or a representative of Boeing present.

14. **COSTS OF REVIEW.** Boeing has paid the Air Force \$1.9 million to reimburse the Air Force's costs of independently reviewing this matter and administering this Agreement.

15. **UNALLOWABLE COSTS.**

a. Boeing agrees that all costs relating to legal and other proceedings specified as unallowable by FAR 31.205-47, incurred by, for, or on behalf of Boeing or any current or former officer, director, agent, employee, consultant, or affiliate of Boeing shall be expressly unallowable costs for Government contract accounting purposes. Unallowable costs include, but are not limited to, (i) costs arising from, related to, or in connection with the Government's criminal and civil investigations and legal proceedings regarding those matters referenced in the Notice and Memorandum and (ii) not less than \$212,651, representing Boeing's good faith estimate through September 30, 2004 (per Ex. H) of the costs of Boeing's submissions, presentations to, and appearances before the Deputy General Counsel for Contractor Responsibility, from March 21, 2003, through the date of execution of this Agreement. All damages, restitution, fines and penalties levied or to be levied in, or arising out of the matters referenced in the Notice and Memorandum, are agreed to be expressly unallowable costs, and Boeing agrees to account separately for such costs.

b. Boeing also hereby agrees to treat as unallowable the following costs identified in subparagraphs (i) - (viii) below: (i) the amount of the payment referred to in Article 14 of this Agreement; (ii) the costs of the reviews referenced in Articles 3.g. and 3.h. of this Agreement; (iii) \$96,532 representing Boeing's good faith estimate (per Ex. I) of the costs of responding to the Air Force's July 24, 2003 "Notification of Intent to Exercise Government's Right to Partially Terminate Contract No. F04701-98-D-0002 for Default for Good Cause" that was subsequently converted to a deductive contract change; (iv) all costs in *Lockheed Martin Corp. v. The Boeing*



*Co., William Erskine, Kenneth Branch, and Larry Satchell*, U.S. District Court for the Middle District of Florida, Orlando Division, Case No. 6:03-CV-796-ORL-29-KRS; provided, however, that these costs shall be allowable to the extent permitted under the FAR in the event Boeing is the prevailing party in the litigation by achieving the benefit of dismissal or denial of all counts through motion or trial (without the payment by Boeing of any consideration); (v) the costs of the Special Compliance Officer established pursuant to Article 5 of this Agreement; (vi) \$27,539,996, representing Boeing's good faith estimate (per Ex. J) of the costs of preparation and promulgation of enhanced policies, programs and procedures to bring Boeing's self governance, compliance, and/or ethics programs to a level acceptable to the Air Force, including the costs of IDS's 2003 Ethics Recommitment Day, the Boeing Law Department's 2003 "Stand-Down Day," and 2003 Recommitment Days held by other Boeing units, as represented to the Air Force in Boeing's submissions and in Exhibit B to this Agreement; (vii) \$1,687,142/year through the expiration of this Agreement, representing Boeing's good faith estimate (per Ex. K) of the costs of administering this Agreement; and (viii) \$2,196,518, representing the full salary and benefits costs (per Ex. L) for the periods indicated of the former Boeing employees identified in Exhibit L.

c. Boeing's costs of operating and maintaining its enhanced self governance, compliance, and/or ethics policies, programs and procedures are an allowable category of cost for purposes of this Agreement, subject to reasonableness determinations by the appropriate contracting officer.

d. Boeing recognizes that costs that are agreed to be unallowable under the terms of this Article are to be accounted for under Cost Accounting Standard 405 and FAR 31.201-6 as costs that are mutually agreed to be unallowable. As such, they are to be identified and excluded

from any billing, claim or proposal, regardless of any other agreement to the contrary. Boeing shall identify such costs within 90 days of the date of this Agreement. Boeing shall adjust any bid rate, billing rate, or unsettled final indirect cost rate pools to eliminate any costs made unallowable by this Agreement, and shall advise the Air Force, the Corporate Administrative Contracting Officer ("CACO") and the cognizant Government auditor of the amount, nature, and accounting given to such costs within 90 days of the date of this Agreement. The Air Force or a designated representative shall have the right to audit Boeing's books and records to verify compliance with this Article 15.d. Such audit rights shall be in addition to any audit rights the Government may have under the terms of any contract with Boeing.

e. The identification of certain categories of costs as allowable for the purposes of this Agreement is not a determination that the costs are reasonable and is not binding on the CACO or other agencies' determinations of allowability under the FAR.

16. **ADVERSE ACTIONS.** Any adverse actions taken, or to be taken, by Boeing against any employee or other individual associated with Boeing arising out of or related to alleged wrongdoing related to the EELV and/or EKV matters referenced in the Notice and Memorandum were solely the result of Boeing's initiatives and decisions and not the result of any action by, or on behalf of, agents or employees of the United States.

17. **STATUS OF SUSPENSIONS.**

a. The Air Force enters into this Agreement, and will terminate the suspensions, subject to the conditions of this Agreement, in reliance upon Boeing's faithfully fulfilling the terms and conditions of this Agreement. The Air Force's decision to terminate the suspensions, based upon the information available to the Air Force, shall not restrict the Air Force or any other agency of the Government from instituting administrative action, including, without

limitation, suspension or debarment, should information indicating the propriety of such action come to the attention of the Air Force or such other agency.

b. The Air Force and Boeing recognize that DOJ criminal and civil investigations ("the DOJ investigations") are continuing regarding the EELV and EKV incidents referenced in the Notice and Memorandum. If Boeing is either not charged with, or is acquitted of criminal offenses relating to those incidents, the Air Force will not reinstate the suspensions, or initiate debarment proceedings based upon the DOJ investigations. If, however, Boeing is charged with or convicted of a criminal offense, or a civil judgment is obtained by the DOJ, relating to one or both of those incidents, the Air Force will reassess the need for the protection of suspension or debarment.

c. If the Air Force determines that suspension or debarment is necessary on the basis contemplated by subparagraph b. above, on the basis of newly discovered evidence relating to the matters in the Notice and Memorandum, or because of Boeing's violation of this Agreement, Boeing shall have an opportunity, not to exceed fifteen (15) days, to demonstrate its present responsibility with respect to such determination. If the Air Force determines that Boeing is unable to do so, the Air Force shall not be restricted from instituting administrative actions, including, without limitation, suspension or debarment.

d. This Agreement will not restrict the Air Force or any other agency of the Government from instituting administrative actions, including, without limitation, suspension or debarment, based upon facts or circumstances outside the scope of the Notice and Memorandum.

18. **NOTIFY EMPLOYEES.** Boeing will notify its employees, consultants and contract labor of the fact and substance of this Agreement, the nature of the unethical conduct leading to

the Agreement, and the importance of each individual's compliance with the terms of the Agreement and all requirements of law, regulations, and Boeing policies and procedures.

19. **REORGANIZATIONS WITHIN BOEING.** If any Boeing units subject to provisions of the Agreement that are applicable only to IDS are reorganized into other parts of Boeing outside of IDS during the term of this Agreement, such units will remain subject to the IDS-related provisions of the Agreement regardless of where those units are located in Boeing's corporate organization.

20. **SALE OF BOEING BUSINESSES.**

a. In the event that Boeing, during the term of the Agreement, sells or transfers ownership of any of the cited Boeing units, Boeing shall notify the Air Force in advance of closing and require by the terms of the transfer that the new owner maintain in the transferred unit(s) an ethics/compliance program generally comparable to the ethics/compliance program in existence at the cited Boeing units and further require that the new owner shall be accountable to the Air Force for compliance by the transferred unit(s) with other applicable terms of the Agreement.

b. In the event that Boeing, during the term of the Agreement, sells or transfers ownership of any other significant unit(s) of IDS (i.e., representing more than 5% of IDS's sales), Boeing shall notify the Air Force in advance of closing and require by the terms of the transfer that the new owner maintain an ethics/compliance program sufficient to establish the continued present responsibility of the transferred unit(s), to the satisfaction of the Air Force.

c. In the event of a sale or transfer involving an IDS business unit accounting for less than 5% of IDS's sales, Boeing shall notify the Air Force in advance of closing.

21. **COMPANY PURCHASE OF BUSINESSES.** In the event that Boeing purchases or acquires new business units after the effective date of this Agreement and prior to the end of the term of this Agreement, Boeing shall implement all provisions of this Agreement, and all its ethics policies and procedures in the new business(es) within 180 days following such purchase or acquisition.

22. **PRIVILEGES.**

a. No provision of this Agreement shall be construed to require the waiver of any applicable privilege, including, but not limited to, the attorney-client privilege and the attorney work product doctrine.

b. The Air Force will not make any public release outside of the Government of documents or records required by this Agreement to be submitted, except where release is required by the Freedom of Information Act, 5 U.S.C. § 552, and other laws. Before making any such public release, the Air Force, in accordance with Air Force and Department of Defense policy, will provide Boeing with an opportunity to comment as to whether the records or documents are required to be released. Boeing agrees that this Agreement is a public document.

23. **RELEASE.** Boeing hereby releases the United States Department of the Air Force and its employees from any and all liability or claims arising out of or related to the suspensions, the investigation of Boeing's present responsibility at issue here, and the discussions leading to this Agreement.

24. **PARAGRAPH HEADINGS.** The paragraph headings in this Agreement are inserted for convenient reference only and shall not affect the meaning or interpretation of this Agreement.

25. **COUNTERPARTS**. This Agreement may be executed in one or more counterparts each of which shall be an original, but all of which, taken together, shall constitute one and the same Agreement.

26. **AIR FORCE RELIANCE**. Boeing represents that all written materials and other information provided to the Air Force by its authorized representatives during the course of discussions with the Air Force in response to the Notice and Memorandum are true and accurate, to the best information and belief of Boeing. Boeing understands that in executing this Agreement the Air Force relies upon the truth, accuracy and completeness of all such representations.

27. **ENTIRE AGREEMENT**. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, relating to the subject matter hereof. This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.

28. **RESTRICTION ON USE**. The parties agree that the negotiation or existence of this Agreement, or of any provision of the Agreement, shall not be admissible or used in any proposal, contract, proceeding, litigation or investigation; provided, however, that Boeing shall not be prohibited from: (a) in the case where a Government Contracting Officer is considering Boeing's responsibility for a particular contract, notifying the Contracting Officer of the existence of the Agreement and referring the Contracting Officer to the Air Force Deputy General Counsel (Contractor Responsibility) to secure a copy of the Agreement; (b) in the case of a bid protest action at the General Accounting Office ("GAO") or U.S. Court of Federal Claims ("COFC") challenging Boeing's present responsibility and/or eligibility for a particular contract, notifying the GAO or COFC of the existence of the Agreement and requesting that the

Air Force provide a copy of the Agreement for the record in the protest action; (c) in the case of any criminal or civil litigation based on the allegations in the Notice and Memorandum, requesting in writing that the Air Force permit Boeing to refer to and/or offer into evidence, to the extent permitted by law, the Agreement in response to allegations and/or submissions relating or referring to the Air Force's suspension of the cited Boeing units; (d) in the case of settlement discussions relating to civil or criminal proceedings initiated by a governmental entity based on the allegations in the Notice and Memorandum, notifying the entity of the existence of the Agreement and referring the entity to the Air Force Deputy General Counsel (Contractor Responsibility) for a copy of the Agreement; (e) offering into evidence or using in a proposal, contract, proceeding, litigation or investigation the fact of any remedial or other action taken by Boeing otherwise referenced in the Agreement; or (f) using for any purpose an Exhibit to the Agreement. In any such case where Boeing or another party requests a copy of the Agreement, the Air Force will provide the Agreement as requested.

29. **AUTHORIZED REPRESENTATIVE.** Harry C. Stonecipher, Boeing's Chief Executive Officer, is fully authorized to execute this Agreement and represents that he has authority to bind Boeing.

30. **SEVERABILITY.** In the event that any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions of this Agreement.

31. **NOTICES.** Any notices, reports, or information required hereunder shall be in writing and delivered or mailed by registered or certified mail, postage prepaid as follows:

If to Boeing, to: Senior Vice President  
Office of Internal Governance  
The Boeing Company  
7755 East Marginal Way South  
Mail Code 1F80  
Seattle, WA 98108

If to the Air Force, to: Deputy General Counsel  
(Contractor Responsibility)  
Department of the Air Force  
SAP/GCR  
4040 North Fairfax Drive, Suite 204  
Arlington, VA 22203

32. MODIFICATION. This Agreement may be amended or modified only by a written document signed by both parties.

DEPARTMENT OF THE AIR FORCE

BY: 

STEVEN A. SHAW  
Deputy General Counsel  
(Contractor Responsibility)

DATE: 3/4/05

THE BOEING COMPANY

BY: 

HARRY C. STONECIPHER  
Chief Executive Officer

DATE: 9/22/04