

## **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: 6/30/06

BY: Judith Rabinowitz  
JUDITH RABINOWITZ  
Senior Trial Counsel  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

THE BOEING COMPANY

DATED: June 29, 2006 BY: Douglas D Bain  
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


**THE BOEING COMPANY**

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

BY: \_\_\_\_\_  
DOUGLAS G. BAIN  
Senior Vice President - Law  
The Boeing Company

REVIEWED AND APPROVED

DATED: 6/30/06

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

**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: 6/30/06

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

**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: June 29, '06 BY: \_\_\_\_\_

\_\_\_\_\_  
RICHARD CULLEN  
McGuire Woods LLP  
Attorneys for The Boeing Company