

**UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION**

COMMISSIONERS: **Deborah Platt Majoras, Chairman**
 Pamela Jones Harbour
 Jon Leibowitz
 William E. Kovacic
 J. Thomas Rosch

In the Matter of

**Lockheed Martin Corporation,
a corporation;**

**The Boeing Company,
a corporation;**

and

**United Launch Alliance, L.L.C.,
a limited liability company.**

Docket No. C-4188

DECISION AND ORDER

The Federal Trade Commission (“Commission”), having initiated an investigation of the proposed formation of United Launch Alliance, L.L.C. (“ULA”) by The Boeing Company (“Boeing”) and Lockheed Martin Corporation (“LM”) (hereinafter all of which may be referred to as “Respondents”), and Respondents having been furnished thereafter with a copy of a draft of Complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge Respondents with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. § 45; and

Respondents, their attorneys, and counsel for the Commission having thereafter executed an Agreement Containing Consent Order (“Consent Agreement”), containing an admission by Respondents of all the jurisdictional facts set forth in the aforesaid draft of Complaint, a statement that the signing of said Consent Agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in such Complaint, or that the facts as alleged in such Complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by the Commission’s Rules; and

The Commission, having thereafter considered the matter and having determined that it had reason to believe that Respondents have violated the said Acts, and that a Complaint should issue stating its charges in that respect, and having accepted the executed Consent Agreement and placed such Consent Agreement on the public record for a period of thirty (30) days for the receipt and consideration of public comments, and having considered the comments filed by interested persons, now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby makes the following jurisdictional findings and issues the following Decision and Order (“Order”):

1. Respondent Boeing is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 100 N. Riverside, Chicago, IL 60606.
2. Respondent LM is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Maryland, with its office and principal place of business located at 6801 Rockledge Drive, Bethesda, MD 20817.
3. Respondent ULA is a limited liability company organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business located at 12257 South Wadsworth Boulevard, Mailstop T6000, Littleton, CO 80125.
4. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of Respondents, and the proceeding is in the public interest.

ORDER

I.

IT IS ORDERED that, for purposes of this Order, the following definitions shall apply:

- A. “Boeing” means The Boeing Company, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures (excluding ULA), subsidiaries, divisions, groups and affiliates controlled by Boeing, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- B. “LM” means Lockheed Martin Corporation, its directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures (excluding ULA), subsidiaries, divisions, groups and affiliates controlled by LM, and the respective directors, officers, employees, agents, representatives, predecessors, successors, and assigns of each.
- C. “ULA” means United Launch Alliance, L.L.C., its general partners, directors, officers, employees, agents, representatives, predecessors, successors, and assigns; its joint ventures, subsidiaries, divisions, groups and affiliates controlled by ULA, and the respective directors, officers,

employees, agents, representatives, predecessors, successors, and assigns of each. ULA shall not include Boeing or LM.

- D. “Collaborative Agreement” means any agreement involving collaboration on a proposal or other competitive efforts.
- E. “Commission” means the Federal Trade Commission.
- F. “Compliance Officer” means the person appointed pursuant to Paragraph IX. of this Order, as well as his or her designees.
- G. “Customer Support Proposal Team” means a unique group of people dedicated to developing ULA’s offering in support of a specific Space Vehicle Prime Contractor’s proposal, each such team to comprise employees responsible for performing contracting, mission management, and business development functions, who shall receive contract, estimating, financial, administrative, and technical proposal information provided by ULA in connection with that offering and tailor the information to the specific Space Vehicle Prime Contractor’s proposal.
- H. “Discriminate” or “Discriminating” means
 1. in the context of behavior by ULA, to advantage Boeing or LM or disadvantage a competitor of Boeing or LM in connection with a Program for any reason; and
 2. in the context of behavior by Space Vehicle Business, to advantage ULA or disadvantage a competitor of ULA in connection with a Program for any reason;*provided, however, that the determination of compliance or non-compliance with the non-discrimination provisions of this Order shall take into account that different firms will take different competitive approaches that may result in differences, individually and collectively, in price, schedule, quality, data, personnel, investment (including, but not limited to, independent research and development), technology, innovations, design, and risk.*
- I. “DoD” means the United States Department of Defense.
- J. “General Counsel of DoD” means the General Counsel of the Department of Defense or the General Counsel’s designee.
- K. “Government Customer” means a United States government agency procuring Space Vehicles, Launch Vehicles, or Launch Services.
- L. “Launch Services” means the service of placing a Space Vehicle into earth orbit or beyond using a Launch Vehicle.
- M. “Launch Services Information” means all information that is needed by a Space Vehicle Prime Contractor from a Launch Services Prime Contractor to enable the Space Vehicle to perform its intended function in interfacing with a Launch Vehicle. Launch Services Information includes all related technical data and information provided by a Launch Services Prime Contractor to a Space Vehicle Prime Contractor prior to entering into, or in the course of working pursuant to, a Collaborative Agreement between the Launch Services Prime Contractor and the Space Vehicle

Prime Contractor or otherwise supporting the Space Vehicle Prime Contractor's efforts in connection with a Program. Data and information provided include, but are not limited to, the types of data and information provided by a Launch Service Prime Contractor to the Space Vehicle Business in connection with a Program.

- N. "Launch Services Prime Contractor" means an entity performing, proposing to perform, or with responsibility to perform, Launch Services for a Government Customer. ULA is a Launch Services Prime Contractor. For purposes of this Order, Launch Services Prime Contractor does not include a Space Vehicle Prime Contractor performing pursuant to a delivery-in-orbit contract.
- O. "Launch Vehicle" means an expendable launch system or other system to launch a Space Vehicle from the earth's surface to earth orbit or beyond. For purposes of this Order, Launch Vehicle does not include the space shuttle system.
- P. "Master Agreement" means the Joint Venture Master Agreement, dated May 2, 2005, and all exhibits, schedules, attachments, and amendments thereto, pursuant to which Boeing and LM formed ULA.
- Q. "Non-Public Launch Services Information" means any information not in the public domain furnished by any Launch Services Prime Contractor other than ULA to Boeing and LM (including Space Vehicle Business),
1. and, if written information, designated by the supplier of the information as proprietary information on the face thereof, or, if oral, visual, or other information, identified as proprietary information in writing by the supplier of the information at any time up to thirty (30) days after such disclosure.
 2. Non-Public Launch Services Information shall not include information:
 - a. that falls within the public domain through no violation of this Order or any other existing agreement intended to protect confidentiality;
 - b. that becomes known from a third party not in breach of a confidentiality or non-disclosure agreement with respect to such information;
 - c. independently known or developed by the recipient without reference to Non-Public Launch Services Information; or
 - d. after seven (7) years from the date of disclosure to Boeing and LM.
- R. "Non-Public Space Vehicle Information" means any information not in the public domain furnished by a Space Vehicle Prime Contractor to ULA,
1. and, if written information, designated in writing by the Space Vehicle Prime Contractor as proprietary information on the face thereof, or, if oral, visual, or other information, identified as proprietary information in writing by the Space Vehicle Prime Contractor at any time up to thirty (30) days after such disclosure.
 2. Non-Public Space Vehicle Information shall not include information:
 - a. that falls within the public domain through no violation of this Order or any other existing agreement intended to protect confidentiality;
 - b. that becomes known from a third party not in breach of a confidentiality or non-disclosure agreement with respect to such information;

- c. independently known or developed by the recipient without reference to Non-Public Space Vehicle Information; or
 - d. after seven (7) years from the date of disclosure to ULA.
- S. “Personnel” means directors, officers, employees, or consultants hired or retained by or representing Respondents.
- T. “Program” means -- for a particular mission, future mission, proposal for a potential future mission, or any other project for which ULA is a supplier or potential supplier of Launch Services to a Government Customer or to a Space Vehicle Prime Contractor -- the entire process through the award of the applicable contract or, if a determination is made by the Government Customer not to award the applicable contract, through the time such a determination is made, including, but not limited to, any and all activities related to formulating, finalizing, and submitting proposals, whether accepted by the Government Customer or not, and negotiations with the Government Customer, whether procured under one solicitation or multiple solicitations, and whether procured by one agency or by multiple agencies.
- U. “Respondents” means, collectively or individually as the context requires, Boeing, LM, or ULA.
- V. “Secretary of Defense” means the United States Secretary of Defense, the Deputy Secretary of Defense, or the designee of either.
- W. “Secretary of the Air Force” means the United States Secretary of the Air Force or the Secretary of the Air Force’s designee.
- X. "Space Vehicle" means a spacecraft or multiple spacecrafts weighing not less than 4,150 pounds, in total, to be launched to low earth orbit at a ninety degrees inclination reference orbit, or a lighter spacecraft or multiple spacecrafts to higher orbital parameters requiring equivalent lift capacity, procured or proposed to be procured pursuant to a Program with the capability of performing various scientific, military, exploration, observation, intelligence, reconnaissance, communication or other space missions.
- Y. “Space Vehicle Business” means those portions of LM or Boeing, other than ULA, that are engaged in the manufacture and sale of Space Vehicles, and that perform or seek to perform contracts for a Government Customer.
- Z. “Space Vehicle Information” means all information that is needed by a Launch Services Prime Contractor from a Space Vehicle Prime Contractor in order to engage in and successfully complete a Launch Service. Space Vehicle Information includes all related technical data and information provided by a Space Vehicle Prime Contractor to a Launch Services Prime Contractor prior to entering into, or in the course of working pursuant to, a Collaborative Agreement, or otherwise supporting the Launch Services Prime Contractor’s efforts in connection with a Program. Data and information provided include, but are not limited to, the types of data and information provided by a Space Vehicle Prime Contractor to the Launch Vehicle Prime Contractor in connection with a Program.

- AA. “Space Vehicle Prime Contractor” means an entity proposing to deliver, or with responsibility to deliver, a Space Vehicle to a Government Customer. Boeing and LM are Space Vehicle Prime Contractors.
- BB. “Technical Support” means access to the laboratories and engineering staffs of LM and Boeing by ULA if needed to address the ability of ULA to provide Launch Services.
- CC. “Transaction” means the proposed formation of ULA by Boeing and LM pursuant to the Master Agreement.

II.

IT IS FURTHER ORDERED that:

- A. In connection with each and every Program:
 - 1. ULA shall provide Launch Services on a non-discriminatory basis, which shall include, without limitation, the following:
 - a. not entering into any exclusive Collaborative Agreement with any Space Vehicle Prime Contractor for Launch Services;
 - b. not Discriminating in supporting the proposal of any Space Vehicle Prime Contractor;
 - c. not Discriminating in providing Launch Services Information to all Space Vehicle Prime Contractors;
 - d. not Discriminating regarding staffing decisions, resource allocation, or design decisions in connection with Launch Services to be offered or provided to any Space Vehicle Prime Contractor;
 - e. not Discriminating in entering into Collaborative Agreements or other arrangements and not Discriminating as to any Space Vehicle Prime Contractors in the negotiations of such agreements and other arrangements. Such Collaborative Agreements shall not Discriminate in favor of Space Vehicle Business against any other Space Vehicle Prime Contractor on any basis, including, but not limited to, price, schedule, quality, data, personnel, investment (including, but not limited to, independent research and development), technology, innovations, design, and risk;
 - f. not Discriminating among Space Vehicle Prime Contractors in making available for use in Launch Services any technologies developed by ULA under independent research and development funding, government-funded prime contract research and development activities or other funds expended by ULA but not provided by third parties, including LM and Boeing, or resulting from joint investment with a third party;
 - g. establishing and maintaining separate Customer Support Proposal Teams to support each Space Vehicle Prime Contractor’s efforts; and
 - h. as to each separate Customer Support Proposal Team established, ensuring that Non-Public Space Vehicle Information is not shared between the Customer Support Proposal Teams. For purposes of Paragraph II. of this Order only, Non-Public Space Vehicle Information shall also include the unique information on the ULA technical offering being made by each separate Customer Support Proposal Team.

2. ULA shall not enter into a Collaborative Agreement with a Space Vehicle Prime Contractor for ULA's supply of Launch Services for a Program until the Compliance Officer has approved a draft of the final Collaborative Agreement.
 - a. ULA shall provide to the Compliance Officer copies of the draft of the final Collaborative Agreement for the approval of the Compliance Officer, prior to execution of the Collaborative Agreement.
 - b. The Compliance Officer shall act within ten (10) business days of receipt of the draft of the final Collaborative Agreement from ULA, and shall not unreasonably withhold approval of such Collaborative Agreement or its terms.
 - c. The Compliance Officer may approve or reject the Collaborative Agreement in its entirety or may reject specific terms of the Collaborative Agreement.
 - (1) If the Compliance Officer approves the Collaborative Agreement in its entirety, then the Compliance Officer shall so notify ULA.
 - (2) If the Compliance Officer disapproves a Collaborative Agreement in its entirety, or rejects specific terms of a Collaborative Agreement:
 - (a) the Compliance Officer shall, no later than ten (10) business days after receipt of the Collaborative Agreement from ULA, refer the matter to the Secretary of the Air Force, including the Compliance Officer's recommendations relating to the Collaborative Agreement;
 - (b) the Secretary of the Air Force, in his or her sole discretion, shall, within ten (10) business days of the referral by the Compliance Officer to the Secretary of the Air Force, make the final determination as to whether to approve the Collaborative Agreement and what terms should be included in such Collaborative Agreement;
 - (c) if a Collaborative Agreement is referred to the Secretary of the Air Force and the Secretary of the Air Force makes his or her final determination, ULA shall enter into such Collaborative Agreement only on the terms determined by the Secretary of the Air Force.
 - d. ULA shall not change, modify, or alter the terms of a Collaborative Agreement that has been entered into pursuant to the procedure described in Paragraph II. of this Order without the prior approval of the Compliance Officer.
 - (1) If the Compliance Officer approves the proposed change, then the Compliance Officer shall so notify ULA.
 - (2) If the Compliance Officer disapproves the change, either in part or in its entirety:
 - (a) the Compliance Officer shall, no later than ten (10) business days after receipt of the proposed change from ULA, refer the matter to the Secretary of the Air Force, including the Compliance Officer's recommendations relating to the proposed change;
 - (b) the Secretary of the Air Force, in his or her sole discretion, shall, within ten (10) business days of the referral by the Compliance Officer to the Secretary of the Air Force, make the final determination as to whether to approve the proposed change;
 - (c) if an agreement or arrangement is referred to the Secretary of the Air Force and the Secretary of the Air Force makes his or her final determination, ULA shall change the agreement or arrangement only as approved by the Secretary of the Air Force.
3. If the Compliance Officer concludes that ULA has Discriminated in violation of this Order, or otherwise failed to comply with the requirements of Paragraph II. of this Order:

- a. The Compliance Officer shall notify ULA immediately, describing the conduct that may violate the Order;
 - b. ULA shall commence action to correct the conduct no later than ten (10) business days after such notification and shall, no later than the end of the ten (10) day period:
 - (1) notify the Compliance Officer that it has commenced corrective action; and
 - (2) describe in detail the action it is taking and will take and the amount of time it will take to complete the action to correct the conduct; and
 - c. if ULA fails to commence action to correct the conduct within ten (10) business days of such notification, fails to complete the action to correct the conduct within the amount of time described in its notification to the Compliance Officer, or if the Compliance Officer determines that the corrective action that ULA proposes to take will not adequately remedy the violation or will take too long to correct the conduct,
 - (1) the Compliance Officer shall refer the matter to the Secretary of the Air Force who shall, in consultation with the General Counsel of DoD, decide what, if any, corrective action shall be required by ULA; and
 - (2) the Secretary shall notify ULA and the Compliance Officer of his or her decision in writing within ten (10) business days of the referral by the Compliance Officer to the Secretary of the Air Force.
- B. Notwithstanding any other provisions of Paragraph II. of this Order, ULA may decline to provide Launch Services or a Customer Support Proposal Team to a particular Space Vehicle Prime Contractor in connection with a Program if:
1. ULA has determined that supplying Launch Services or a Customer Support Proposal Team to that particular Space Vehicle Prime Contractor is commercially unreasonable because either:
 - a. the particular Space Vehicle Prime Contractor lacks the technical or financial capability to supply a Space Vehicle; or
 - b. ULA does not have the capacity to provide Launch Services or a Customer Support Proposal Team to one or more Space Vehicle Prime Contractors that have requested such services or team because the number or burden of Space Vehicle Prime Contractors seeking the benefit of Paragraph II. of this Order becomes unreasonably large; and
 2. ULA has obtained, pursuant to the following procedure, the prior approval of the Compliance Officer to decline to provide such services or team to that particular Space Vehicle Prime Contractor:
 - a. ULA shall notify the Compliance Officer in writing of ULA's determination, including a detailed explanation of the basis for ULA's determination, no later than ten (10) business days after receipt of the request by the Space Vehicle Prime Contractor for provision of such services or team;
 - b. if the Compliance Officer concurs in ULA's determination, the Compliance Officer shall notify ULA no later than ten (10) business days after the Compliance Officer's receipt of ULA's determination; and
 - c. if the Compliance Officer does not concur in ULA's determination, then the Compliance Officer shall refer ULA's determination to the Secretary of the Air Force no later than ten (10) business days after the Compliance Officer's receipt of ULA's determination, with the recommendation of the Compliance Officer; the Secretary of the Air Force shall have the sole discretion to decide whether ULA shall supply Launch Services or a Customer Support

Proposal Team to that Space Vehicle Prime Contractor, such decision to be made within ten (10) business days after the referral by the Compliance Officer.

- C. If ULA enters into a Collaborative Agreement with any Space Vehicle Prime Contractor for any Program, and the team engages in joint investment or development activity for that Program, then notwithstanding any other provision in this Order, ULA shall be under no obligation to disclose the products or other results of such joint investments or developments of one team to any other team for the Program.
- D. The provision of any information, technology, or product to any party pursuant to this Order shall be subject to appropriate confidentiality agreements on the treatment of competition-sensitive, national security-sensitive, ITAR-controlled, and/or proprietary information. Notwithstanding any other provision of this Order, Respondents shall not be required to provide any information to the Compliance Officer or a Space Vehicle Prime Contractor if they do not have the security clearance required to be eligible to receive such information.
- E. No provision of this Order shall require ULA to provide products, services, or technology to any party without commercially reasonable terms.

III.

IT IS FURTHER ORDERED that:

- A. When LM or Boeing has the responsibility to select a provider of Launch Services for a particular Space Vehicle as a Space Vehicle Prime Contractor and has the opportunity to select ULA as the provider of Launch Services for that Space Vehicle:
 - 1. LM and Boeing shall:
 - a. not Discriminate in the selection of the provider of Launch Services;
 - b. not Discriminate in providing Space Vehicle Information to providers of Launch Services who are capable of providing Launch Services in connection with the particular Space Vehicle; and
 - c. not Discriminate regarding staffing decisions, resource allocation, or design decisions in connection with the Launch Services;
 - 2. In connection with the criteria for selecting Launch Services for a particular Space Vehicle:
 - a. LM or Boeing, as appropriate, shall propose Launch Services selection criteria that do not Discriminate.
 - b. LM or Boeing, as appropriate, shall submit the proposed Launch Services selection criteria to the Compliance Officer for his or her approval before soliciting Launch Services.
 - c. The Compliance Officer shall act within ten (10) business days after receipt of the criteria and shall not unreasonably withhold approval of the criteria.
 - (1) If the Compliance Officer approves the criteria, then the Compliance Officer shall so notify LM or Boeing, as appropriate.
 - (2) If the Compliance Officer rejects the criteria:
 - (a) the Compliance Officer shall, no later than ten (10) business days after receipt of the criteria, refer the matter to the Secretary of the Air Force, including the Compliance Officer's recommendations relating to the criteria;

- (b) the Secretary of the Air Force, in his or her sole discretion, shall, within ten (10) business days after the referral by the Compliance Officer to the Secretary of the Air Force, make the final determination as to whether to approve the criteria and what terms should be included; the Secretary of the Air Force shall approve or alter the source selection criteria within five (5) business days of the decision of the Compliance Officer.
 3. LM or Boeing, as appropriate, shall not change, modify, or alter the selection criteria without the prior approval of the Compliance Officer, and the Compliance Officer shall not unreasonably withhold approval of the changes.
 - a. If LM or Boeing, as appropriate, determines to change, modify, or alter the selection criteria, they shall notify the Compliance Officer in writing, including the proposed changes and the reasons for the changes.
 - b. If the Compliance Officer approves the proposed change, then the Compliance Officer shall so notify LM or Boeing, as appropriate, no later than ten (10) business days after receiving the written notification.
 - c. If the Compliance Officer disapproves the change, either in part or in its entirety:
 - (1) the Compliance Officer shall, no later than ten (10) business days after receipt of the proposed change, refer the matter to the Secretary of the Air Force, including the Compliance Officer's recommendations relating to the proposed changes;
 - (2) the Secretary of the Air Force, in his or her sole discretion, shall, within ten (10) business days after the referral by the Compliance Officer to the Secretary of the Air Force, make the final determination as to whether to approve the proposed changes and notify LM or Boeing, as appropriate;
 - (3) if changes are referred to the Secretary of the Air Force, and the Secretary of the Air Force makes his or her final determination, LM or Boeing, as appropriate, shall change the criteria only as approved by the Secretary of the Air Force.
- B. When LM or Boeing, as appropriate, determines to select ULA as the Launch Services provider for a particular Space Vehicle, it shall seek the prior approval of the Compliance Officer.
1. LM or Boeing, as appropriate, shall notify the Compliance Officer of its determination and fully explain the reasons for the proposed selection.
 2. The Compliance Officer shall act within ten (10) business days after receipt of the written notification and shall not unreasonably withhold approval of the selection.
 3. If the Compliance Officer approves the selection, then the Compliance Officer shall so notify LM or Boeing, as appropriate.
 4. If the Compliance Officer disapproves the selection:
 - a. the Compliance Officer shall, no later than ten (10) business days after receipt of the notification, refer the matter to the Secretary of the Air Force, including the Compliance Officer's recommendations relating to the selection;
 - b. the Secretary of the Air Force, in his or her sole discretion, shall, within ten (10) business days after the referral by the Compliance Officer to the Secretary of the Air Force, make the final determination as to whether to approve the selection and notify LM or Boeing, as appropriate;
 - c. if a selection is referred to the Secretary of the Air Force, and the Secretary of the Air Force makes his or her final determination, the selection shall be made only as determined by the Secretary of the Air Force.

- C. If the Compliance Officer concludes that LM or Boeing has Discriminated in violation of this Order, or otherwise failed to comply with the requirements of Paragraph III. of this Order:
1. The Compliance Officer shall notify LM or Boeing, as appropriate, immediately, describing the conduct that may violate the Order;
 2. LM or Boeing, as appropriate, shall commence action to correct the conduct no later than ten (10) business days after such notification and shall, no later than the end of the ten (10) day period:
 - a. notify the Compliance Officer that it has commenced corrective action, and
 - b. describe in detail the action it is taking and will take and the amount of time it will take to complete the action to correct the conduct; and
 3. If LM or Boeing, as appropriate, fails to commence action to correct the conduct within ten (10) business days of such notification, fails to complete the action to correct the conduct within the amount of time described in its notification to the Compliance Officer, or if the Compliance Officer determines that the corrective action that LM or Boeing, as appropriate, proposes to take will not adequately remedy the violation or will take too long to correct the conduct,
 - a. the Compliance Officer shall refer the matter to the Secretary of the Air Force who shall, in consultation with the General Counsel of DoD, decide what, if any, corrective action shall be required by LM or Boeing; and
 - b. the Secretary shall notify LM or Boeing, as appropriate, and the Compliance Officer of his or her decision in writing within ten (10) business days after the referral by the Compliance Officer to the Secretary of the Air Force.
- D. When LM or Boeing, as a Space Vehicle Prime Contractor, has the responsibility to select a provider of Launch Services for a particular Space Vehicle and has the opportunity to select ULA as the provider of Launch Services for that Space Vehicle, it shall not be required to comply with the requirements of Paragraph III. of this Order if LM or Boeing, as appropriate, notifies the Compliance Officer in writing that, in connection with the selection of a provider of Launch Services relating to a particular Space Vehicle:
1. it has determined not to select ULA to provide Launch Services in connection with the particular Space Vehicle; or
 2. ULA has determined not to provide Launch Services in connection with that particular Space Vehicle.

IV.

IT IS FURTHER ORDERED that

- A. No later than ten (10) business days after the closing of the Transaction, Respondents shall deliver a copy of the final Master Agreement to the Compliance Officer.
- B. Boeing and LM shall comply with Exhibit F of the Master Agreement.

- C. After the closing of the Transaction and after Respondents have delivered a copy of the final Master Agreement to the Compliance Officer, Boeing and LM shall not change the Master Agreement or any provision of the Master Agreement unless:
1. Boeing and LM have notified the Compliance Officer of the proposed change, and
 2. the Compliance Officer has not, within five (5) business days of receiving notice of the proposed change:
 - a. notified Boeing and LM that the proposed change would or could reasonably be expected to adversely affect:
 - (1) Respondents' ability to comply with this Order;
 - (2) Boeing's and LM's ability and responsibility to provide technical and financial support to ULA; or
 - (3) ULA's ability to successfully perform contracts for Government Customers; and
 - b. requested additional time in which to review and evaluate the proposed change.
- D. If the Compliance Officer raises specific concerns and requests additional time, Boeing and LM shall effectuate the proposed change only if:
1. the Compliance Officer approves the change as proposed; or
 2. the Compliance Officer has not notified Boeing or LM, within ten (10) business days of requesting additional time, that he or she has disapproved the proposed change in whole or in part.
- E. In the Compliance Officer's notification to Boeing or LM of his or her disapproval, the Compliance Officer shall explain the basis of the disapproval and afford Boeing and LM an opportunity to address the concerns by modifying the proposed change.
- F. If the Compliance Officer notifies Boeing or LM of his or her disapproval and Boeing and LM are unable to modify the proposed change in a manner satisfactory to the Compliance Officer:
1. the Compliance Officer shall, at the request of Boeing or LM, immediately refer the matter to the Secretary of the Air Force and the General Counsel of DoD, including the Compliance Officer's recommendations relating to the proposed changes and Boeing's and LM's explanations in support of the proposed changes; and
 2. the Secretary of the Air Force, in consultation with the General Counsel of DoD, shall, within ten (10) business days after the referral by the Compliance Officer, make the final determination as to whether to approve the proposed changes and notify LM or Boeing accordingly.

V.

IT IS FURTHER ORDERED that:

- A. Boeing and LM, including Space Vehicle Business, shall not, absent the prior written consent of the proprietor of Non-Public Launch Services Information, provide, disclose or otherwise make available to ULA any Non-Public Launch Services Information, other than Non-Public Launch Services Information relating to Delta and Atlas launch vehicles.

- B. Boeing and LM, including Space Vehicle Business, shall use any Non-Public Launch Services Information only in their capacity as a Space Vehicle manufacturer, absent the prior written consent of the proprietor of Non-Public Launch Services Information; for avoidance of doubt, Boeing is not restricted from using information relating to Delta launch vehicles, and LM is not restricted from using information relating to Atlas launch vehicles.
- C. ULA shall not, absent the prior written consent of the proprietor of Non-Public Space Vehicle Information, provide, disclose, or otherwise make available to Boeing or LM, including Space Vehicle Business, any Non-Public Space Vehicle Information.
- D. ULA shall use Non-Public Space Vehicle Information only in ULA's capacity as a Launch Services supplier absent the prior written consent of the proprietor of the Non-Public Space Vehicle Information.
- E. Notwithstanding the provisions of Paragraphs V.C. and V.D. of this Order:
 - 1. ULA may disclose Non-Public Space Vehicle Information to LM Personnel and Boeing Personnel who are serving as members of the Board of Directors of ULA only under the following conditions:
 - a. the LM Personnel and Boeing Personnel to whom such information would be disclosed have no management responsibilities relating to Space Vehicle Business;
 - b. the information that would be disclosed is provided only while such Personnel are serving as members of the Board of Directors;
 - c. the information that would be disclosed is provided for the sole purpose of providing oversight;
 - d. the information that would be disclosed is used solely for the purpose of providing oversight; and
 - e. ULA and such Personnel comply with the procedures described in Paragraphs V.E.4. and V.F. of this Order.
 - 2. ULA may disclose Non-Public Space Vehicle Information to LM Personnel and Boeing Personnel who prepare LM's and Boeing's financial statements and tax returns only under the following conditions:
 - a. the LM Personnel and Boeing Personnel to whom such information would be disclosed have no management responsibilities relating to Space Vehicle Business;
 - b. the information that would be disclosed is necessary for the preparation of LM's and Boeing's financial statements and tax returns and cannot be obtained any other way;
 - c. the information that would be disclosed is provided only while such Personnel have responsibilities in connection with the preparation of LM's and Boeing's financial statements and tax returns;
 - d. the information is provided for the sole purpose of preparing LM's and Boeing's financial statements and tax returns;
 - e. the information is used solely for the purpose of preparing LM's and Boeing's financial statements and tax returns; and
 - f. ULA and such Personnel comply with the procedures described in Paragraphs V.E.4. and V.F. of this Order.
 - 3. ULA may disclose Non-Public Space Vehicle Information to LM Personnel and Boeing Personnel who are providing Technical Support to ULA only under the following conditions:

- a. the information is necessary for the provision of Technical Support;
 - b. the information is provided only during such time as the Personnel are providing Technical Support to ULA;
 - c. the information is provided for the sole purpose of providing Technical Support to ULA;
 - d. the information shall be used solely for the purpose of providing Technical Support to ULA; and
 - e. ULA and such Personnel comply with the procedures described in Paragraphs V.E.4. and V.F. of this Order.
4. Respondents shall assure that LM Personnel and Boeing Personnel who receive Non-Public Space Vehicle Information pursuant to Paragraphs V.E.1, V.E.2, or V.E.3 of this Order, each:
 - a. use Non-Public Space Vehicle Information solely for the purposes described in Paragraph V. of this Order;
 - b. not disclose such information to any other Personnel at LM or Boeing;
 - c. maintain the confidentiality of such information;
 - d. return any documents obtained pursuant to Paragraph V. of this Order to the Compliance Officer when such documents are no longer being used;
 - e. agree in writing to comply with the obligations set forth in this Order in a form approved by the Compliance Officer, and
 - f. submit that written agreement to the Compliance Officer at the time required by the Compliance Officer.
 5. ULA may disclose Non-Public Space Vehicle Information to LM Personnel and Boeing Personnel as necessary to provide services consistent with Respondents' obligations pursuant to the Transition Services Agreement (Lockheed Martin to ULA); Transition Services Agreement (ULA to Lockheed Martin); and Transition Services Agreement (Boeing and ULA) (hereinafter referred to collectively as "Transition Services Agreements") only under the following conditions:
 - a. ULA, LM and Boeing shall comply with the confidentiality provisions of the Transition Services Agreements;
 - b. those provisions shall be incorporated by reference into this Order and made a part hereof as Confidential Appendix A;
 - c. any failure by ULA, LM, or Boeing to comply with the confidentiality provisions of the Transition Services Agreements shall constitute a failure to comply with this Order; and
 - d. the Compliance Officer shall have the authority to monitor ULA's, LM's, and Boeing's compliance with the confidentiality provisions of the Transition Services Agreements.
 6. ULA may disclose Non-Public Space Vehicle Information to LM Personnel and Boeing Personnel to the extent necessary to enable LM or Boeing to continue to provide, after the expiration of the Transition Services Agreements, similar administrative services to those that had been provided by LM or Boeing to ULA pursuant to the Transition Services Agreements if:
 - a. ULA has notified the Compliance Officer that it intends to obtain such services from LM or Boeing, as appropriate; LM or Boeing, as appropriate, has notified the Compliance Officer that it intends to provide such services; and the Compliance Officer has notified ULA, LM, or Boeing, as appropriate, that he or she approves the arrangement;
 - b. standard industry-wide confidentiality provisions have been executed by the appropriate parties and have been submitted to the Compliance Officer;
 - c. the parties comply with those provisions;

- d. any failure by ULA, LM , or Boeing to comply with those provisions shall constitute a failure to comply with this Order; and
 - e. the Compliance Officer shall have the authority to monitor ULA's, LM's, and Boeing's compliance with these provisions.
- F. Respondents shall:
- 1. develop and implement procedures to ensure that their Personnel comply with the obligations contained in Paragraph V. of this Order, including, but not limited to, procedures for monitoring and enforcing these obligations;
 - 2. convey these procedures to their Personnel;
 - 3. require LM Personnel and Boeing Personnel who receive Non-Public Space Vehicle Information to comply with the requirements of Paragraph V. of this Order; and
 - 4. conduct annual training sessions with their Personnel who have or may expect to have duties in connection with these obligations.
- G. LM or Boeing, as applicable, shall ensure that its Personnel receiving Non-Public Space Vehicle Information from ULA are not involved in any LM or Boeing proposal team pursuing those Program(s) and will not assist any such LM or Boeing proposal team during the Program and for a period to continue at least one year following the date of his or her last access to or use of the Non-Public Space Vehicle Information.
- H. If any Non-Public Space Vehicle Information or Non-Public Launch Services Information is transferred, obtained, or used in violation of Paragraph V. of this Order, the Compliance Officer shall have the authority to implement procedures in his or her sole discretion to remedy the violation immediately and shall notify the General Counsel of the DoD and the Federal Trade Commission.
- I. Respondents shall deliver a copy of this Order to any Space Vehicle Prime Contractor prior to obtaining from the Space Vehicle Prime Contractor any Non-Public Space Vehicle Information and to any Launch Services Prime Contractor prior to obtaining from the Launch Services Prime Contractor any Non-Public Launch Services Information.

VI.

IT IS FURTHER ORDERED that:

- A. By no later than twenty-four (24) months after the closing of the Transaction, ULA shall have separate communication networks and management information systems from the networks and systems of Boeing and LM (including Space Vehicle Business), with appropriate firewalls and confidentiality protections in place.
- B. By no later than three (3) months after the closing of the Transaction:
 - 1. ULA shall have separate physical locations segregated from Boeing and LM (including Space Vehicle Business), although the respective businesses may be located on the same campus with clearly demarcated separate facilities; ULA's physical locations, facilities, and business shall be secured separately from LM and Boeing (including Space Vehicle Business) so that ULA's physical locations and facilities cannot be accessed by LM or Boeing (including Space Vehicle

Business) Personnel, other than for facility repair, support, and maintenance, pursuant to ULA's lease agreements with LM or Boeing; notwithstanding the foregoing, LM's and Boeing's Personnel may access ULA facilities for meetings and similar events in the ordinary course of business, but each shall be treated as a third-party contractor for purposes of compliance with Respondents' obligations pursuant to this Order;

2. pending implementation of the separate communication networks and management information systems required by Paragraph VI.A. of this Order, ULA shall implement procedures to ensure that the information systems it employs protect Non-Public Space Vehicle Information within those systems from being accessed by LM or Boeing Personnel other than those permitted to use that information pursuant to the provisions of Paragraph V.E. of this Order; and
3. ULA Personnel shall have and shall wear different badges from LM Personnel and Boeing Personnel.

C. No later than fifteen (15) business days after the closing of the Transaction, ULA, LM, and Boeing shall jointly submit to the Compliance Officer, the General Counsel of the DoD, and the Commission's Compliance Division a proposal outlining the policies and procedures to be implemented to satisfy the obligations of Paragraph VI. of this Order. Formal policies and procedures implementing Paragraph VI. of this Order shall be submitted to the Compliance Officer, the General Counsel of the DoD, and the Commission's Compliance Division for review within ninety (90) calendar days after closing of the Transaction. After consultation with ULA, LM, and Boeing, the General Counsel of DoD, shall in his or her sole discretion make changes to such plan to assure compliance with the terms of this Order. Such changes shall be reflected in the next compliance reports submitted by the Compliance Officer and Respondents.

D. LM or Boeing, as appropriate (including Space Vehicle Business), shall not hire or re-hire ULA Personnel (other than consultants) without first requiring such Personnel to acknowledge and agree in writing to comply with the obligations of Paragraph V. of this Order. Any ULA Personnel (including consultants) who have had access to Non-Public Space Vehicle Information in connection with a Program and who are hired, or re-hired, by LM or Boeing shall not, for a period of at least one year from their last day at ULA, have any responsibilities relating to such Programs in which the former ULA Personnel were personally and substantially involved while at ULA.

1. This provision will not restrict any ULA employee who has had access only to Non-Public Space Vehicle Information of one parent company from being hired by that parent company; and
2. Records of such transfers, and copies of any such acknowledgments, shall be maintained during the term of this Order, and shall be available for inspection by the Compliance Officer. LM or Boeing, as applicable, shall notify the Compliance Officer of any such hiring or rehiring.

VII.

IT IS FURTHER ORDERED that, when this Order places time limits on certain actions by the Compliance Officer, Secretary of DoD, Secretary of the Air Force, or General Counsel of DoD, such limits may be modified by their agreement with Respondents. When this Order places time limits on certain actions by any Respondent, such limits may be modified by agreement between the Compliance Officer and that Respondent.

VIII.

IT IS FURTHER ORDERED that:

- A. No later than thirty (30) days after the closing of the Transaction:
 - 1. Respondents shall distribute this Order to the Personnel of ULA and Space Vehicle Business.
 - 2. In a separate communication:
 - a. ULA shall inform all of its Personnel of the terms and requirements of this Order and require all ULA Personnel to adhere to such provisions.
 - b. Boeing and LM shall inform all of its Space Vehicle Business Personnel of the terms and requirements of this Order and require all Space Vehicle Business Personnel to adhere to such provisions.
- B. No later than three (3) months after the closing of the Transaction, Respondents shall:
 - 1. develop procedures, policies, and practices relating to the receipt, identification, custody, use, and disposal of any Non-Public Space Vehicle Information or Non-Public Launch Services Information and incorporate such procedures, policies, and practices into Respondents' operations manuals or other systems used for disseminating such procedures, policies, and practices;
 - 2. complete the development of new procedures or the incorporation into existing procedures measures to be used in the event any Personnel of Respondents fails to comply with such procedures, policies, and practices; and
 - 3. complete the provision of in-person or computer-based training of ULA and Space Vehicle Business Personnel who have or who can expect to have duties related to the requirements of this Order.
- C. After the initial training required by Paragraph VIII.B.3. of this Order, Respondents shall conduct annual in-person or computer-based training of ULA and Space Vehicle Business Personnel who have or can expect to have duties related to the requirements of this Order.
- D. In connection with the training required by Paragraphs V.F.4., VIII.B.3., and VIII.C. of this Order, no later than one month prior to conducting the required training, Respondents shall notify the Compliance Officer of the categories of Personnel that they plan to include in the training. If the Compliance Officer determines that additional categories of Personnel must be included in the training, he or she will notify Respondents no later than ten (10) days after receiving Respondents' notification, and Respondents shall include those categories of Personnel in the required training.

IX.

IT IS FURTHER ORDERED that:

- A. The Secretary of Defense shall appoint a Compliance Officer, who shall be an employee of the United States government. The Compliance Officer shall oversee compliance by the Respondents with the terms of this Order, and shall have the power and authority to oversee such compliance.

- B. Respondents shall not object to the Compliance Officer chosen by the Secretary of Defense.
- C. To perform his or her duties and responsibilities pursuant to this Order, and subject to any legally recognized privilege, the Compliance Officer shall be authorized to and may:
1. interview any of Respondents' Personnel, upon three (3) days' notice to that Respondent and without restraint or interference by Respondents, relating to any matters contained in this Order as determined by the Compliance Officer;
 2. during normal business hours, inspect and copy any document in the possession, custody, or control of Respondents relating to any matters contained in this Order as determined by the Compliance Officer;
 3. during normal business hours, obtain access to and inspect any systems or equipment to which Respondents' Personnel have access;
 4. during normal business hours, obtain access to and inspect any physical facility, building, or other premises to which Respondents' Personnel have access; and
 5. require Respondents to provide documents, data, and other information to the Compliance Officer in such form as the Compliance Officer may direct and within such time periods as the Compliance Officer may require.
- D. The Compliance Officer may require Respondents to comply with his or her requests relating to Respondents' compliance with their obligations pursuant to this Order within reasonable time limits established by the Compliance Officer.
1. The Compliance Officer shall convey to Respondents the time limits applicable to the request at the time he or she makes the request.
 2. Failure to comply with the Compliance Officer's requests within the time limits established by the Compliance Officer shall be a violation of this Order; provided, however, that the Compliance Officer shall, within the initial time limits established, afford Respondents the opportunity to request additional time if needed and the Compliance Officer shall not unreasonably withhold approval of such a request for an extension.
- E. The Compliance Officer shall:
1. investigate any complaint or representation made to him or her, or made available to him or her with respect to any matter arising in relation to or connected with compliance by Respondents with this Order;
 2. solicit and accept comments from third parties regarding Respondents' compliance with this Order as the Compliance Officer deems necessary and appropriate;
 3. use DoD or other United States government staff as appropriate; and
 4. hire, at the cost and expense of Respondents, a third party (or third parties) who shall be solely accountable to the Compliance Officer, shall have such duties and responsibilities as determined by the Compliance Officer and that do not exceed the Compliance Officer's duties and responsibilities as set forth in this Order and shall have the same access as the Compliance Officer pursuant to Paragraph IX.C. of this Order; provided, however, that the professional staff (including third party consultants) reporting to the Compliance Officer shall be no larger than ten (10) persons (measured by full-time equivalents), with such maximum to be expanded solely with the permission of the Secretary of the Air Force as necessary pursuant to this Order; and provided that such professional staff (including third party consultants) shall

maintain the confidentiality of business sensitive or proprietary information and documents of Respondents or any other person.

- F. Respondents shall use their best efforts to assist the Compliance Officer and the Compliance Officer's staff in satisfaction of their responsibilities pursuant to this Order.
- G. Respondents shall cooperate with the Compliance Officer and his or her staff and shall take no action to interfere with or to impede the performance of the Compliance Officer and his or her staff in satisfaction of these responsibilities.
- H. Each of Respondents shall furnish to the Compliance Officer a compliance report, to be submitted as directed by the Compliance Officer, but in any event no less frequently than on an annual basis or more frequently than quarterly.
 - 1. The compliance report of each Respondent shall contain an affidavit that describes the actions that that Respondent has taken and the steps that that Respondent has implemented to comply with the terms of this Order and shall be verified as true and correct by an officer of that Respondent.
 - 2. The Compliance Officer may direct Respondents to include in their reports any other information the Compliance Officer deems useful or necessary.
- I. The Compliance Officer shall report in writing on an annual basis to the Secretary of the Air Force, the General Counsel of the DoD, and the Compliance Division of the Commission, summarizing the actions the Compliance Officer has undertaken in performing his or her duties pursuant to this Order. Such report shall include any compliance reports submitted by Respondents to the Compliance Officer pursuant to Paragraph IX.H. of this Order.
- J. If the Compliance Officer is unable to perform his or her duties for whatever reason, the Compliance Officer shall promptly notify the individuals listed in Paragraph IX.I. of this Order. The Secretary of Defense shall then appoint another Compliance Officer. The Secretary of Defense shall have the sole discretion to replace the Compliance Officer at any time when the Secretary of Defense considers such action appropriate.
- K. If the Compliance Officer determines to investigate any assertions or allegations of noncompliance, the Compliance Officer shall advise Respondents as soon as practical of the assertions or allegations of noncompliance that the Compliance Officer intends to investigate, the Compliance Officer shall afford Respondents reasonable time limits, to be determined by the Compliance Officer in his or her sole discretion, to attempt to resolve any deficiencies in Respondents' performance of its obligations under this Order.
- L. If the Compliance Officer has reason to believe that there has been a failure of the Respondents to comply with any term of this Order, he or she shall notify the Secretary of the Air Force, the General Counsel of the DoD, and the Compliance Division of the Commission. As soon as practical, the Compliance Officer shall inform Respondents that he or she has notified the Secretary of the Air Force, the General Counsel of the DoD, and the Compliance Division of the Commission of the failure and the material nature of the assertion or allegation of noncompliance.

M. Respondents:

1. shall bear all of their costs of monitoring, complying with, or enforcing this Order, and all such reasonable costs of the DoD arising solely from monitoring, complying with, or enforcing this Order, excluding the salaries and benefits of United States government employees, and including, but not limited to, the costs of the Compliance Officer and the costs associated with the retention of third parties to assist the Compliance Officer.
2. shall not charge to the DoD, either directly or indirectly, any costs of DoD referred to in Paragraph IX.M.1. of this Order; Respondents shall not charge to DoD, either directly or indirectly, any of Respondents' costs, referred to in Paragraph IX.M.1. of this Order, including any remedial costs, as defined by Paragraph IX.M.3. of this Order; provided, however, that costs referred to in Paragraph IX.M.1. of this Order, incurred by Respondents, other than remedial costs, associated with normal business activities that could reasonably have been undertaken by Respondents in the absence of this Order are not subject to the charging restrictions of Paragraph IX.M.2. of this Order, whether or not such activities are affected by this Order; and further provided that, in the event that the Commission determines to seek civil penalties based on non-compliance with provisions of this Order, and the conduct at issue is held to be compliant with the Order, the remedial costs disallowed pursuant to Paragraph IX.M. of this Order may be charged to DoD.
3. Remedial costs are those costs, incurred by Respondents, relating directly to the administration of measures to remedy conduct of Respondents in violation of this Order, where the following conditions are met:
 - a. the conduct of Respondents was not undertaken pursuant to prior written direction or approval of the Compliance Officer;
 - b. the Secretary of the Air Force has taken action in accordance with this Order indicating concurrence with the Compliance Officer's conclusion that Respondents have engaged in conduct in violation of this Order with respect to a Program; and
 - c. said costs are incurred after the date of the Secretary of the Air Force's action.

X.

IT IS FURTHER ORDERED that each Respondent shall notify the General Counsel of DoD and the Commission at least thirty (30) days prior to any proposed change in that Respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this Order.

XI.

IT IS FURTHER ORDERED that, for the purpose of determining or securing compliance with this Order, subject to any legally recognized privilege and any security requirements imposed by a United States Government Agency, and upon written request, each Respondent shall permit any duly authorized representative of the Commission:

- A. Access, during business hours and in the presence of counsel, to all facilities and access to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and

documents in the possession or under the control of that Respondent relating to any matters contained in this Order; and

- B. Upon five (5) days' notice to that Respondent and without restraint or interference from it, to interview officers, directors, employees, independent contractors, or agents of that Respondent, who may have counsel present, relating to any matters contained in this Order.

XII.

IT IS FURTHER ORDERED that within sixty (60) days after the date this Order becomes final and annually for the next nine (9) years on the anniversary of the date this Order becomes final, and at such additional times as the Commission or the General Counsel of DoD may require, each Respondent shall submit to the Commission and the General Counsel of DoD a verified written report setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with the requirements of this Order, including, but not limited to, a separate, specific statement by the General Counsel of each Respondent as to whether that Respondent has complied with the requirements of Paragraph IV. of this Order.

XIII.

IT IS FURTHER ORDERED that this Order shall terminate on May 1, 2017.

By the Commission.

Donald S. Clark
Secretary

SEAL
ISSUED: May 1, 2007