

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

COMMISSIONERS: **Andrew N. Ferguson, Chairman**
 Mark R. Meador

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| In the Matter of |) | |
| |) | |
| The Boeing Company, |) | |
| a corporation, and |) | |
| |) | Docket No. C-4826 |
| Spirit AeroSystems Holdings, Inc., |) | |
| a corporation. |) | |
| |) | |

ORDER TO MAINTAIN ASSETS

The Federal Trade Commission initiated an investigation of the proposed transaction by Respondent The Boeing Company (“Boeing”) and Respondent Spirit AeroSystems Holdings, Inc. (“Spirit”) (collectively “Respondents”), whereby Spirit becomes a wholly-owned subsidiary of Boeing. The Commission’s Bureau of Competition prepared and furnished to Respondents the Draft Complaint, which it proposed to present to the Commission for its consideration. If issued by the Commission, the Draft Complaint 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.

Respondents and the Bureau of Competition executed an Agreement Containing Consent Orders (“Consent Agreement”) containing (1) an admission by Respondents of all the jurisdictional facts set forth in the Draft Complaint, (2) a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by Respondents that the law has been violated as alleged in the Draft Complaint, or that the facts as alleged in the Draft Complaint, other than jurisdictional facts, are true, (3) waivers and other provisions as required by the Commission’s Rules, and (4) a proposed Decision and Order and an Order to Maintain Assets.

The Commission considered the matter and determined to accept the executed Consent Agreement and to place such Consent Agreement on the public record for a period of 30 days for the receipt and consideration of public comments. Now in further conformity with the procedure described in Commission Rule 2.34, 16 C.F.R. § 2.34, the Commission hereby issues its Complaint, makes the following jurisdictional findings, and issues this Order to Maintain Assets:

1. Respondent The Boeing Company is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its executive offices and principal place of business located at 929 Long Bridge Drive, Arlington, Virginia, 22202.
2. Respondent Spirit AeroSystems Holdings, Inc. is a corporation organized, existing, and doing business under, and by virtue of, the laws of the State of Delaware with its executive offices and principal place of business located at 3801 South Oliver Street, Wichita, Kansas, 67210.
3. The Commission has jurisdiction over the subject matter of this proceeding and over the Respondents, and the proceeding is in the public interest.

ORDER

I. Definitions

IT IS ORDERED that the definitions used in the Consent Agreement and the Decision and Order shall be incorporated in this Order to Maintain Assets by reference and made a part hereof and, further, that the following definitions shall apply:

- A. “Decision and Order” means the proposed Decision and Order contained in the Consent Agreement or the Decision and Order issued in this matter.
- B. “Orders” means this Order to Maintain Assets and the Decision and Order.

II. Asset Maintenance

IT IS FURTHER ORDERED that that Respondents shall ensure that the Divestiture Assets are operated and maintained in the ordinary course of business consistent with past practices until such assets are fully transferred to the Acquirer, and shall:

- A. Take all actions necessary to maintain the full economic viability, marketability, and competitiveness of the Divestiture Business and related Divestiture Assets, to minimize the risk of any loss of their competitive potential, to operate them in a manner consistent with applicable laws and regulations, and to prevent their destruction, removal, wasting, deterioration, or impairment (other than as a result of ordinary wear and tear);
- B. Not sell, transfer, encumber, or otherwise impair the Divestiture Business and related Divestiture Assets (other than in the manner prescribed in this Order and the Decision and Order) or take any action that lessens their full economic viability, marketability, or competitiveness;
- C. Not terminate the operations of the Divestiture Business and related Divestiture Assets, and shall conduct or cause to be conducted the operations of the Divestiture Business and related Divestiture Assets in the ordinary course of business and in accordance with past

practice (including regular repair and maintenance efforts) and as may be necessary to preserve the full economic viability, ongoing operations, marketability, and competitiveness of the Divestiture Business and related Divestiture Assets; and

- D. Use best efforts to preserve the existing relationships with suppliers, customers, employees, governmental authorities, vendors, landlords, and others having business relationships with the Divestiture Business and related Divestiture Assets.

Provided, however, that Respondents may take actions that the Acquirer has requested or agreed to in writing and that have been approved in advance by Commission staff, in all cases to facilitate the Acquirer's acquisition of the Divestiture Assets and consistent with the purposes of this Order and the Decision and Order.

III. Transition Assistance

IT IS FURTHER ORDERED that:

- A. Until Respondents have transferred all Business Information and divested all Divestiture Assets to the Acquirer, Respondents shall ensure that the Business Information is maintained and updated in the ordinary course of business and shall provide the Acquirer with access to that Business Information (wherever located and however stored) that Respondents have not yet transferred to the Acquirer, and to employees who possess the records and information.
- B. At the option of the Acquirer, Respondents shall provide the Acquirer with Transitional Assistance sufficient to (1) transfer efficiently the Divestiture Assets to the Acquirer and (2) allow the Acquirer to operate the Divestiture Business in a manner that is equivalent in all material respects to the manner in which it was operated, with respect to the Airbus Business, during the 12-month period immediately prior to the applicable Divestiture Date and, with respect to the Subang Business, immediately prior to the applicable Divestiture Date.
- C. Respondents shall provide Transitional Assistance:
 - 1. As set forth in a Divestiture Agreement, or as otherwise reasonably requested by the Acquirer (whether before or after the Divestiture Date);
 - 2. At the price set forth in the Divestiture Agreement, or if no price is set forth, at Direct Cost; and
 - 3. For a period sufficient to meet the requirements of this Section III.

Provided, however, that within 10 business days after a request by the Acquirer, Respondents shall file with the Commission a request for prior approval to extend the term for providing Transitional Assistance for the time reasonably necessary

to allow the Acquirer to operate the Airbus Business or the Subang Business, as the case may be, independently of Respondents.

- D. Respondents shall allow the Acquirer to terminate, in whole or part, any Transitional Assistance of the Divestiture Agreement upon commercially reasonable notice and without penalty.
- E. Respondents shall not cease providing Transitional Assistance other than as a result of an uncured material breach by the Acquirer of the Divestiture Agreement.

IV. Employees

IT IS FURTHER ORDERED that:

- A. Until 6 months after the applicable Divestiture Date, Respondents shall cooperate with and assist the Acquirer to evaluate independently and offer employment to any Divestiture Business Employee.
- B. Respondents shall:
 - 1. No later than 5 days after a request from the Acquirer, provide a list of all Divestiture Business Employees and provide Employee Information for each;
 - 2. No later than 5 days after a request from the Acquirer, provide an opportunity to privately interview any of the Divestiture Business Employees outside the presence or hearing of any employee or agent of Respondents, and to make offers of employment to any of the Divestiture Business Employees;
 - 3. Remove any impediments within the control of Respondents that may deter Divestiture Business Employees from accepting employment with the Acquirer, including removal of any non-compete or confidentiality provisions of employment or other contracts with Respondents that may affect the ability or incentive of those individuals to be employed by the Acquirer, and shall not make any counteroffer to any Divestiture Business Employee who receives an offer of employment from the Acquirer;

Provided, however, that nothing in this Order shall be construed to require Respondents to terminate the employment of any employee or prevent Respondents from continuing the employment of any employee;

- 4. Continue to provide Divestiture Business Employees with compensation and benefits through the applicable Divestiture Date, including regularly scheduled raises and bonuses and the vesting of benefits;

5. Provide reasonable financial incentives for Divestiture Business Employees to continue in their positions, and as may be necessary, to facilitate the employment of such Divestiture Business Employees by the Acquirer; and
 6. Not interfere, directly or indirectly, with the hiring or employing by the Acquirer of any Divestiture Business Employee, not offer any incentive to such employees to decline employment with the Acquirer, and not otherwise interfere with the recruitment of any Divestiture Business Employee by the Acquirer.
- C. Respondents shall not, for a period of 6 months following the applicable Divestiture Date, directly or indirectly, solicit or otherwise attempt to induce any Person employed by the Acquirer to terminate his or her employment with the Acquirer; *provided however*, Respondents may:
1. Hire any such Person whose employment has been terminated by the Acquirer;
 2. Advertise for employees in newspapers, trade publications, or other media, or engage recruiters to conduct general employee search activities, in either case not targeted specifically at one or more Person employed by the Acquirer; or
 3. Hire a Person who has applied for employment with Respondents, as long as such application was not solicited or induced in violation of this Section IV.

V. Confidentiality

IT IS FURTHER ORDERED that:

- A. Respondents shall not (x) disclose (including to Respondents' employees) or (y) use for any reason or purpose, any Confidential Information received or maintained by Respondents relating to the Divestiture Business or Divestiture Assets; *provided, however*, that Respondents may disclose or use such Confidential Information in the course of:
1. Performing their obligations or as permitted under the Orders or any Divestiture Agreement; or
 2. Complying with financial reporting requirements, obtaining legal advice, prosecuting or defending legal claims, investigations, or enforcing actions threatened or brought against the Divestiture Assets or Divestiture Business, or as required by law or regulation, including any applicable securities exchange rules or regulations.
- B. If Respondents disclose or use any Confidential Information in a manner permitted by Paragraph V.A of this Order, Respondents shall only use or disclose the Confidential Information (1) to the extent required, (2) to those employees or Persons who require

such information for the purposes permitted under Paragraph V.A of this Order, and (3) after such employees or Persons have signed an agreement to maintain the confidentiality of such information.

- C. Respondents shall enforce the terms of this Section V and take necessary actions to ensure that their employees and other Persons receiving Confidential Information comply with the terms of this Section V, including implementing access and data controls, training its employees, and other actions that Respondents would take to protect their own trade secrets and proprietary information.

VI. Monitor

IT IS FURTHER ORDERED that:

- A. The Commission appoints ALCIS Advisers GmbH as the Monitor to observe and report on Respondents' compliance with their obligations as set forth in Sections II-V of this Order and Sections II-VIII of the Decision and Order.
- B. Respondents and the Monitor may enter into an agreement relating to the Monitor's services. Any such agreement:
 - 1. Shall be subject to the approval of the Commission;
 - 2. Shall not limit, and the signatories shall not construe it to limit, the terms of this Section VI or Section IX of the Decision and Order ("Monitor Sections"), and to the extent any provision in the agreement varies from or conflicts with any provision in the Monitor Sections, Respondents and the Monitor shall comply with the Monitor Sections; and
 - 3. Shall include a provision stating that the agreement does not limit, and the signatories shall not construe it to limit, the terms of the Orders in this matter, and to the extent any provision in the agreement varies from or conflicts with any provision in the Orders, Respondents and the Monitor shall comply with the Orders.
- C. The Monitor shall:
 - 1. Have the authority to monitor Respondents' with the obligations set forth in the Orders;
 - 2. Act in consultation with the Commission or its staff;
 - 3. Serve as an independent third party and not as an employee or agent of Respondents or of the Commission;
 - 4. Serve without bond or other security;
 - 5. At the Monitor's option, employ such consultants, accountants, attorneys, and other representatives and assistants as are reasonably necessary to carry out the Monitor's duties and responsibilities;

6. Enter into a non-disclosure or other confidentiality agreement with the Commission related to Commission materials and information received in connection with the performance of the Monitor's duties and require that each of the Monitor's consultants, accountants, attorneys, and other representatives and assistants shall also enter into a non-disclosure or other confidentiality agreement with the Commission;
7. Notify staff of the Commission, in writing, no later than 5 days in advance of entering into any arrangement that creates a conflict of interest, or the appearance of a conflict of interest, including a financial, professional or personal conflict. If the Monitor becomes aware of a such a conflict only after it has arisen, the Monitor shall notify the Commission as soon as the Monitor becomes aware of the conflict;
8. Report in writing to the Commission concerning Respondents' compliance with this Order on a schedule as determined by Commission staff and at any other time requested by the staff of the Commission; and
9. Unless the Commission or its staff determine otherwise, the Monitor shall serve until Commission staff determines that Respondents have satisfied all obligations under Sections II-V of the Decision and Order, and files a final report.

D. Respondents shall:

1. Cooperate with and assist the Monitor in performing his or her duties for the purpose of reviewing Respondents' compliance with their obligations under the Orders, including as requested by the Monitor, (a) providing the Monitor full and complete access to personnel, information and facilities; and (b) making such arrangements with third parties to facilitate access by the Monitor;
2. Not interfere with the ability of the Monitor to perform his or her duties pursuant to the Orders;
3. Pay the Monitor's fees and expenses as set forth in an agreement approved by the Commission, or if such agreement has not been approved, pay the Monitor's customary fees, as well as expenses the Monitor incurs performing his or her duties under the Orders, including expenses of any consultants, accountants, attorneys, and other representatives and assistants that are reasonably necessary to assist the Monitor in carrying out his or her duties and responsibilities;
4. Not require the Monitor to disclose to Respondents the substance of the Monitor's communications with the Commission or any other Person or the substance of written reports submitted to the Commission pursuant to the Orders; and
5. Indemnify and hold the Monitor harmless against any loss, claim, damage, liability, and expense (including attorneys' fees and out of pocket costs) that arises out of, or is connected with, a claim concerning the performance of the Monitor's duties under the Orders, unless the loss, claim, damage, liability, or expense results from gross negligence or willful misconduct by the Monitor.

- E. Respondents may require the Monitor and each of the Monitor’s consultants, accountants, attorneys, and other representatives and assistants to enter into a customary confidentiality agreement, so long as the agreement does not restrict the Monitor’s ability to access personnel, information, and facilities or provide information to the Commission, or otherwise observe and report on Respondents’ compliance with the Orders.
- F. If the Monitor resigns or the Commission determines that the Monitor has ceased to act, has failed to act diligently, or is otherwise unable to continue serving as a Monitor due to the existence of a conflict or other reasons, the Commission may appoint a substitute Monitor. The substitute Monitor shall be afforded all rights, powers, and authorities and shall be subject to all obligations of the Monitor Paragraphs of the Orders. The Commission shall select the substitute Monitor, subject to the consent of Respondents. Respondents:
 - 1. Shall not unreasonably withhold consent to the appointment of the selected substitute Monitor;
 - 2. Shall be deemed to have consented to the selection of the proposed substitute Monitor if, within 10 days of notice by staff of the Commission of the identity of the proposed substitute Monitor, Respondents have not opposed in writing, including the reasons for opposing, the selection of the proposed substitute Monitor; and
 - 3. May enter into an agreement with the substitute Monitor relating to the substitute Monitor’s services that either (a) contains substantially the same terms as the Commission-approved agreement referenced in Paragraph VI.C of this Order; or (b) receives Commission approval.
- G. The Commission may on its own initiative or at the request of the Monitor issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of the Orders.

VII. Divestiture Trustee

IT IS FURTHER ORDERED that:

- A. If Respondents has not fully complied with the obligations to assign, grant, license, divest, transfer, deliver, or otherwise convey the Divestiture Assets as required by the Decision and Order, the Commission may appoint a trustee (“Divestiture Trustee”) to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets in a manner that satisfies the requirements of this Order.
- B. In the event that the Commission or the Attorney General brings an action pursuant to § 5(l) of the Federal Trade Commission Act, 15 U.S.C. § 45(l), or any other statute enforced by the Commission, Respondents shall consent to the appointment of a Divestiture Trustee in such action to assign, grant, license, divest, transfer, deliver, or otherwise convey these assets. Neither the appointment of a Divestiture Trustee nor a decision not to appoint a Divestiture Trustee under this Paragraph VII.B shall preclude

the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed Divestiture Trustee, pursuant to § 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

- C. The Commission shall select the Divestiture Trustee, subject to the consent of Respondents which consent shall not be unreasonably withheld. The Divestiture Trustee shall be a Person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, including the reasons for opposing, the selection of any proposed Divestiture Trustee within 10 days after notice by the staff of the Commission to Respondents of the identity of any proposed Divestiture Trustee, Respondents shall be deemed to have consented to the selection of the proposed Divestiture Trustee.
- D. Not later than 10 days after the appointment of a Divestiture Trustee, Respondents shall execute a trust agreement that, subject to the prior approval of the Commission, transfers to the Divestiture Trustee all rights and powers necessary to permit the Divestiture Trustee to effect the divestitures required by the Decision and Order. Any failure by Respondents to comply with a trust agreement approved by the Commission shall be a violation of this Order.
- E. If a Divestiture Trustee is appointed by the Commission or a court pursuant to this Section VII, Respondents shall consent to the following terms and conditions regarding the Divestiture Trustee's powers, duties, authority, and responsibilities:
 - 1. Subject to the prior approval of the Commission, the Divestiture Trustee shall have the exclusive power and authority to assign, grant, license, divest, transfer, deliver, or otherwise convey the assets that are required by this Order to be assigned, granted, licensed, divested, transferred, delivered, or otherwise conveyed;
 - 2. The Divestiture Trustee shall have one year from the date the Commission approves the trustee trust agreement described herein to accomplish the divestitures, which shall be subject to the prior approval of the Commission. If, however, at the end of the one-year period, the Divestiture Trustee has submitted a plan of divestiture or the Commission believes that the divestitures can be achieved within a reasonable time, the divestiture period may be extended by the Commission;
provided, however, the Commission may extend the divestiture period only 2 times;
 - 3. Subject to any demonstrated legally recognized privilege, the Divestiture Trustee shall have full and complete access to the personnel, books, records, and facilities related to the relevant assets that are required to be assigned, granted, licensed, divested, delivered, or otherwise conveyed by this Order and to any other relevant information, as the Divestiture Trustee may request. Respondents shall develop such financial or other information as the Divestiture Trustee may request and shall cooperate with the Divestiture Trustee. Respondents shall take no action to

interfere with or impede the Divestiture Trustee's accomplishment of the divestitures. Any delays in divestitures caused by Respondents shall extend the time for divestitures under this Section VII in an amount equal to the delay, as determined by the Commission or, for a court-appointed Divestiture Trustee, by the court;

4. The Divestiture Trustee shall use commercially reasonable best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to Respondents' absolute and unconditional obligation to divest expeditiously and at no minimum price. The divestitures shall be made in the manner and to Acquirers that receive the prior approval of the Commission as required by this Order;

provided, however, if the Divestiture Trustee receives bona fide offers from more than one acquiring person for a divestiture, and if the Commission determines to approve more than one such acquiring person for the divestiture, the Divestiture Trustee shall divest to the acquiring person selected by Respondents from among those approved by the Commission;

provided, further, however, that Respondents shall select such person within 5 days of receiving notification of the Commission's approval;

5. The Divestiture Trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The Divestiture Trustee shall have the authority to employ, at the cost and expense of Respondents, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the Divestiture Trustee's duties and responsibilities. The Divestiture Trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission of the account of the Divestiture Trustee, including fees for the Divestiture Trustee's services, all remaining monies shall be paid at the direction of Respondents, and the Divestiture Trustee's power shall be terminated. The compensation of the Divestiture Trustee shall be based at least in significant part on a commission arrangement contingent on the divestiture of all of the relevant assets that are required to be divested by this Order;
6. Respondents shall indemnify the Divestiture Trustee and hold the Divestiture Trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the Divestiture Trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of, any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from gross negligence or willful misconduct by the Divestiture Trustee;
7. The Divestiture Trustee shall have no obligation or authority to operate or maintain the Divestiture Assets required to be divested by this Order;

8. The Divestiture Trustee shall report in writing to Respondents and to the Commission every 30 days concerning the Divestiture Trustee's efforts to accomplish the divestiture; and
 9. Respondents may require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign a customary confidentiality agreement;
provided, however, that such agreement shall not restrict the Divestiture Trustee from providing any information to the Commission.
- F. The Commission may, among other things, require the Divestiture Trustee and each of the Divestiture Trustee's consultants, accountants, attorneys, and other representatives and assistants to sign an appropriate confidentiality agreement related to Commission materials and information received in connection with the performance of the Divestiture Trustee's duties.
- G. If the Commission determines that a Divestiture Trustee has ceased to act or failed to act diligently, the Commission may appoint a substitute Divestiture Trustee in the same manner as provided in this Section VII.
- H. The Commission or, in the case of a court-appointed Divestiture Trustee, the court, may on its own initiative or at the request of the Divestiture Trustee issue such additional orders or directions as may be necessary or appropriate to accomplish the divestitures and other obligations or action required by this Order.

VIII. No Reacquisition

IT IS FURTHER ORDERED that for a period of 10 years from the date the Decision and Order is issued, Respondents shall not, acquire directly or indirectly, through subsidiaries or otherwise, any leasehold, ownership interest, or any other interest, in whole or in part, any of the Divestiture Assets.

IX. Third-Party Prime Contractor Continued Support and Non-Discrimination Protections

IT IS FURTHER ORDERED that:

- A. Respondents shall provide Continued Support to Third-Party Prime Contractors for all Prime/SDAB Contracts and Follow-On Contracts, including:
1. Performing all obligations to a Third-Party Prime Contractor consistent with any terms and conditions for any Prime/SDAB Contract or Follow-On Contract.
 2. Maintaining staffing levels at the levels reasonably necessary for Spirit Defense Aerospace Business to perform its obligations under any Prime/SDAB Contract or Follow-On Contract with a Third-Party Prime Contractor and ensuring key personnel already assigned to a Third-Party Prime Contractor's Military Aircraft, as defined in a mutually-agreed-upon Contract with a Third-Party Prime

Contractor, continue to remain available for that Military Aircraft, in all cases using personnel with equivalent expertise and experience necessary to meet contractual requirements.

3. Maintaining the level of availability that Third-Party Prime Contractors have for their supported Military Aircrafts to Spirit Defense Aerostructure Business data and software and any Intellectual Property rights associated therewith at levels at least equal to those reasonably necessary for Spirit Defense Aerostructure Business to perform its obligations under any Prime/SDAB Contract or Follow-On Contract with a Third-Party Prime Contractor. *Provided, however*, such access does not extend to Boeing IP.
4. Continuing to make Spirit's Intellectual Property (including the Intellectual Property associated with commercial technology) and improvements thereof available to Spirit Defense Aerostructure Business at levels at least equal to those provided for Third-Party Prime Contractors' Military Aircraft during the 12-month period immediately prior to June 30, 2024. *Provided, however*, such access does not extend to Boeing IP.
5. Continuing to provide access to Spirit Defense Aerostructure Business resources including, personnel, equipment, and facilities, for collaborations between Spirit Aerostructure Defense Business and Third-Party Prime Contractors at levels at least equal to those reasonably necessary for Spirit Defense Aerostructure Business to perform its obligations under any Prime/SDAB Contract or Follow-On Contract with a Third-Party Prime Contractor, and after taking into account the overall work scope, volume and nature of the goods and services Third-Party Prime Contractors require and any changes in technology, processes or methodologies in connection with the provision of Defense Aerostructure Services.
6. Maintaining the level of engineering, production, manufacturing and repair/sustainment support that Third-Party Prime Contractors receive at Spirit Defense Aerostructure Business' facilities and at the Third-Party Prime Contractors' facilities for their Third-Party Prime Contractors' Military Aircraft at levels at least equal to those reasonably necessary for Spirit Defense Aerostructure Business to perform its obligations under any Prime/SDAB Contract or Follow-On Contract with a Third-Party Prime Contractor.
7. Maintaining production line capacity and supply sourcing levels for Third-Party Prime Contractors' Military Aircraft at levels at least equal to those reasonably necessary for Spirit Defense Aerostructure Business to perform its obligations under any Prime/SDAB Contract or Follow-On Contract with a Third-Party Prime Contractor.
8. Not allocating profit rate, overhead or sales general and administrative costs inconsistent with government accounting or contracting standards in Federal Acquisition Regulation Supplement/Defense Federal Acquisition Regulation Supplement, including Spirit's DS-1 Disclosure Statement.

9. Responding to any commercially reasonable (a) purchase orders, (b) Requests for Proposals, (c) bids, or (d) other solicitations for Defense Aerostructure Services relating to any Military Aircraft Programs, follow-ons of a Military Aircraft Program, or subsequent phases of development for a Military Aircraft Program in a timely and commercially reasonable manner and in no event later than 90 business days, unless (i) a longer period is specified in the request or otherwise agreed in writing by the requesting Third-Party Prime Contractor; (ii) upon request by SDAB, the Compliance Officer provides additional time.
 10. If the Third-Party Prime Contractor accepts SDAB's response, entering into a mutually-agreed-upon Contract for the provision of Defense Aerostructure Services in connection therewith on Commercially Fair and Reasonable Price Terms and commercially reasonable non-price terms and conditions. Provided, however, that (1) it will not be commercially reasonable for SDAB to condition a bid or proposal or the entry into a mutually-agreed-upon Contract in response to such a request for proposal, bid, other solicitation on a requirement that the Third-Party Prime Contractor enter into such Contract with that Third-Party Prime Contractor, and (2) this Paragraph IX.A.10 does not prohibit good faith negotiations related to the modification of prior mutually-agreed-upon Contracts.
- B. For new Spirit Defense Aerostructure Business (that is not yet the subject of a Prime/SDAB Contract or Follow-On Contract), Respondents shall not Discriminate in providing Defense Aerostructures or Defense Aerostructure Services with respect to a Competitive Pursuit or a Competitive Military Aircraft. Respondents' obligations include:
1. When a Third-Party Prime Contractor notifies Respondents that it desires to have SDAB potentially supply Defense Aerostructure Services for a Military Aircraft Program for a Government Customer, SDAB responding to such request to supply Defense Aerostructure Services in a non-Discriminatory manner, including:
 - a. Responding to any commercially reasonable requests in a timely and commercially reasonable manner and in no event later than 90 business days, unless (i) a longer period is specified in the request or otherwise agreed in writing by the requesting Third-Party Prime Contractor; (ii) upon request by SDAB, the Compliance Officer provides additional time; or (iii) the requesting Third-Party Prime Contractor provides more time to competing subcontractors in which case Spirit Defense Aerostructure Business shall have the benefit of the same period.
 - b. Entering commercially reasonable confidentiality agreements with Third-Party Prime Contractors within 60 Business Days.
 - c. Not Discriminating in developing or providing an Offer requested by or made to a Third-Party Prime Contractor, or in supporting the proposal of the Third-Party Prime Contractor in connection with the Offer.
 - d. Providing Commercially Fair and Reasonable Price Terms.

2. Not Discriminating regarding staffing, resource allocation, or design decisions in connection with Defense Aerostructures or Defense Aerostructure Services to be provided to any Third-Party Prime Contractor.
3. Not Discriminating in making available for use in Military Aircraft Programs any technologies for Defense Aerostructures or Defense Aerostructure Services developed by Spirit Defense Aerostructure Business under independent research and development funding, government-funded research and development activities or other funds expended by Spirit Defense Aerostructure Business; *provided, however*, that Respondents shall be under no obligation (1) to disclose or offer the products or other results of any joint investment or development activity engaged in with one Prime Contractor (including Boeing Military Aircraft Business) to any other Prime Contractor in the same Competitive Pursuit or competing for a related Competitive Military Aircraft; or (2) notwithstanding anything in this Order to the contrary, nothing in this Order requires Boeing to provide access to Boeing IP.
4. Not Discriminating in favor of Boeing Commercial Business or Boeing Military Aircraft Business over Third-Party Prime Contractors' Military Aircraft at Spirit Defense Aerostructure Business; *provided, however*, that the determination of compliance or non-compliance with this provision of this Order must take into account Spirit's prior practices during the 12-month period immediately prior to June 30, 2024, and Spirit's continued performance on existing programs.

X. Maintain Financial Viability and Competitiveness of Spirit NBDB

IT IS FURTHER ORDERED that Respondents will maintain the full financial viability and competitiveness of the NBDB, as is reasonably necessary to perform Spirit Defense Aerostructure Business' obligations under current or future contracts with a Third-Party Prime Contractor and commensurate with the then size, scope, and scale of its then existing operations and future business prospects.

- A. Respondents shall provide Continued Support for Prime/SDAB Contracts and Follow-On Contracts, including:
 1. Maintaining, repairing, and replacing any equipment and other tangible personal property in the manner reasonably necessary for Spirit Defense Aerostructure Business to perform its obligations under any Prime/SDAB Contract or Follow-On Contract.
 2. Providing the resources (including Intellectual Property, facilities, tooling, equipment, materials and manufacturing technology) reasonably necessary for Spirit Defense Aerostructure Business to perform its obligations under any Prime/SDAB Contract or Follow-On Contract.

3. Providing inventory levels reasonably necessary for Spirit Defense Aerostructure Business to perform its obligations under any Prime/SDAB Contract or Follow-On Contract.
 4. Providing the NBDB with sufficient funds to meet rates of operation reasonably necessary to meet Prime/SDAB Contract and Follow-On Contract requirements, or to recover performance in instances where NBDB is not currently meeting its contractual schedule commitments. *Provided, however*, if any Spirit program is not meeting its contractual commitments as of the Acquisition Date, Boeing will have a commercially reasonable period after the Acquisition Date to investigate and make adjustments to recover such performance.
 5. Providing working conditions, staffing levels, and a work force of equivalent size, training, and expertise as reasonably necessary for Spirit Defense Aerostructure Business to perform its obligations under Prime/SDAB Contracts and Follow-On Contracts.
 6. Not financially encumbering or otherwise impairing NBDB such that Spirit Defense Aerostructure Business cannot fulfill its obligations under Prime/SDAB Contracts and Follow-On Contracts.
 7. Not terminating any operations of NBDB, except to the extent a Military Aircraft Program has ended by its terms, a Third-Party Prime Contractor terminates its relationship with Spirit Defense Aerostructure Business, or to the extent there is no longer a demand for the Defense Aerostructure Services at issue.
- B. Respondents shall reasonably increase financial support and capacity to support Prime/SDAB Contracts and Follow-On Contracts, including:
1. Making all reasonably necessary investments in facilities, equipment, and tooling in a timely fashion to ensure that NBDB will be able to meet the rate of production and any increases (ramps) in production and delivery rates specified in its Prime/SDAB Contracts and Follow-On Contracts.
 2. Hiring and staffing personnel in a timely manner, to the extent reasonably possible, to ensure that NBDB will be able to meet the rate of production and any increases (ramps) in production and delivery rates specified in its Prime/SDAB Contracts and Follow-On Contracts.
 3. Making all investments and arrangements reasonably necessary to ensure that any new facilities meet the security requirements of the Third-Party Prime Contractor for Military Aircraft expected to be located in such facility at the time of the facility's completion as are reasonably necessary for Spirit Defense Aerostructure Business to perform its obligations under any Prime/SDAB Contracts or Follow-On Contract.
- C. Respondents will continue to provide Spirit Defense Aerostructure Business with the financial resources needed for Spirit Defense Aerostructure Business to compete for and capture new business opportunities, including sales and marketing, R&D, and bid and proposal expenses, to the extent commercially reasonable and commensurate with the

size, scope, and scale of its existing operations and future prospects reasonably necessary to (1) operate Spirit Defense Aerostructure Business and (2) perform under its existing obligations with customers.

- D. Respondents will prepare financial records for the NBDB, including Profit and Loss statements (excluding overhead), an asset list, and an employee list (by job function) for the full year prior to the acquisition and the year to date for the current year. *Provided, however,* the creation of an NBDB P/L will not require Spirit Defense Aerostructure Business to make changes to its organization, ownership, or legal structure.
1. Within 60 days of the Acquisition Date, Respondent Boeing's independent auditor will provide a written review of NBDB's financials to the Compliance Officer and DSW Designee.
 2. Respondent Boeing's independent auditors will annually review NBDB's financials and create an addendum to the audit, solely for the use of the Compliance Officer and the DSW Designee. The auditor's review will include:
 - a. NBDB Profits and Losses, excluding overhead from Boeing. The Profit and Loss Statement will include a summary Profit and Loss, including revenue, Gross Profit by dollar and Gross Profit by percentage, depreciation, amortization, and operating profit compared to the prior year.
 - b. Additional schedules will include:
 - i. Unit volumes, unit price, revenue, Gross Profit by dollar and Gross Profit by percentage by customer, by product, compared to the prior year.
 - ii. Actual volumes vs commitments, which will initially be vs the prior year by customer, by product.
 - iii. Employee count by job function, compared to prior year.
 - iv. Asset list vs prior year.

XI. Notice of New Spirit Defense Aerostructure Business

IT IS FURTHER ORDERED that within 10 days of Spirit Defense Aerostructure Business receiving a written request from a Third-Party Prime Contractor indicating an interest in procuring Defense Aerostructures or Defense Aerostructure Services from Spirit Defense Aerostructure Business, Respondents shall notify the Commission and Compliance Officer of the request, including the identity of the Third-Party Prime Contractor and the Military Aircraft

Program for which support is being sought. *Provided, however*, that if the Military Aircraft Program is classified, only the Compliance Officer will be notified.

XII. Third-Party Prime Contractor Confidentiality and Firewall Protections

IT IS FURTHER ORDERED that:

- A. Respondents shall take all actions as are necessary and appropriate to prevent access to, or the disclosure or use of, any Nonpublic Military Aircraft Information or Nonpublic Defense Aerostructure Information by or to any Person(s) not authorized to access, receive, or use such Nonpublic Military Aircraft Information or Nonpublic Defense Aerostructure Information pursuant to the terms of this Order, including any Boeing Military Aircraft Personnel, other than specified groups who are not responsible for design, pricing, capture or strategy efforts for Competitive Pursuits for Boeing Military Aircraft Business programs; *provided, however*, subject to the obligation to establish Firewalled Spirit Defense Aerostructure Customer Teams for each Third-Party Prime Contractor's Military Aircraft in Paragraph XII.B.2 of this Order, nothing in this Order shall limit Spirit's use of Nonpublic Military Aircraft Information or Nonpublic Defense Aerostructure Information in order to (1) perform its obligations under a mutually-agreed-upon Contract with a customer; or (2) perform its obligations under the terms of this Order. The specified groups, which may also include Spirit personnel who are not members of a Firewalled Spirit Defense Aerostructure Customer Team, will (x) provide technical, functional, and administrative support, including but not limited to human resources, financial, information technology, engineering, technical, security, administrative, or management support services, and (y) support enterprise decision-making to fulfill Boeing's oversight and fiduciary responsibilities, including to ensure (i) that an Offer is consistent with Boeing's financial guidelines and risk management constructs, accounting requirements, SEC disclosure and reporting obligations, and responsible management of a public company; (ii) Spirit Defense Aerostructure Business can effectively execute the Offer as expected, if it is accepted; and (iii) Spirit Defense Aerostructure Business can effectively fulfill its obligations with respect to any Third-Party Prime Contractor Contract. The specified groups will be responsible for redacting, removing, aggregating, or otherwise ensuring that no Third-Party Prime Contractor's Nonpublic Military Aircraft Information or Nonpublic Defense Aerostructure Information is shared outside of Spirit Defense Aerostructure Business or the specified group. *Provided, however*, Spirit Defense Aerostructure Business shall not be prohibited from disclosing to Boeing and others any technologies and Intellectual Property developed under a mutually-agreed-upon Third-Party Prime Contractor Contract that are owned by Spirit Defense Aerostructure Business, provided that Spirit Defense Aerostructure Business does not disclose any Nonpublic Military Aircraft Information or Nonpublic Defense Aerostructure Information of the Third-Party Prime Contractor, or that the technology or Intellectual Property is being used with the Third-Party Prime Contractor's Military Aircraft.
- B. Respondents shall develop and implement procedures and requirements to protect such Nonpublic Military Aircraft Information and Nonpublic Defense Aerostructure

Information and to comply with the prohibitions and requirements of this Order, including taking the following actions for any Military Aircraft Program to protect such Nonpublic Military Aircraft Information and Nonpublic Defense Aerostructure Information:

1. Respondents shall maintain and provide protections that are the same as those in any Prime/SDAB Contract or Follow-On Contract between Spirit Defense Aerostructure Business and the Third-Party Prime Contractor. *Provided, however,* if not already included in the Prime/SDAB Contract or Follow-On Contract, Respondents must provide the protections in Paragraphs XII.B-XII.F of this Order, as applicable.
2. For each instance in which Spirit Defense Aerostructure Business is supporting more than one Prime Contractor for the same competition or a Directly Related Program, establish and maintain Firewalled Spirit Defense Aerostructure Customer Teams for each Third-Party Prime Contractor's Military Aircraft.
 - a. For Prime/SDAB Contracts or Follow-On Contracts executed prior to the Acquisition Date, Respondents shall submit a roster of all personnel on each Firewalled Spirit Defense Aerostructure Customer Team to the Compliance Officer no later than 15 days after the Acquisition Date.
 - b. For Prime/SDAB Contracts or Follow-On Contracts executed after the Acquisition Date, Respondents shall submit a roster of all personnel assigned to the Firewall Spirit Defense Aerostructure Customer Team to the Compliance Officer within a time period determined by the Compliance Officer.
3. Spirit Defense Aerostructure Business personnel assigned to the Firewalled Spirit Defense Aerostructure Customer Team shall receive training on the restrictions on the disclosure, use, and dissemination of Nonpublic Military Aircraft Information and Nonpublic Defense Aerostructure Information and, following completion of the relevant Military Aircraft Program, will be reminded of their ongoing obligations with respect to such Nonpublic Military Aircraft Information and Nonpublic Defense Aerostructure Information;
4. Spirit Defense Aerostructure Business personnel assigned to a Firewalled Spirit Defense Aerostructure Customer Team shall sign appropriate non-disclosure or equivalent agreements providing written acknowledgement of their responsibilities regarding the restrictions on the use and dissemination of Nonpublic Military Aircraft Information and Nonpublic Defense Aerostructure Information;
5. Respondents shall keep separate and limit access to Nonpublic Military Aircraft Information and Nonpublic Defense Aerostructure Information of each Firewalled Spirit Defense Aerostructure Customer Team, e.g., by separating data in information systems, physically separating, securing, and/or shielding prototypes, models, and hard copies of such Nonpublic Military Aircraft Information and Nonpublic Defense Aerostructure Information; utilizing identification badge

hangers to identify members of Firewalled Spirit Defense Aerostructure Customer Teams; and employing other processes designed to confine the flow of such Nonpublic Military Aircraft Information and Nonpublic Defense Aerostructure Information to personnel who have permission to see it in connection with the Military Aircraft Program;

6. No member of a Firewalled Spirit Defense Aerostructure Customer Team supporting a Third-Party Prime Contractor within a Competitive Pursuit (a) may participate in any way, directly or indirectly, in supporting Boeing Military Aircraft Business within the same Competitive Pursuit or in supporting any competing Boeing Military Aircraft Business' Competitive Military Aircraft, including the preparation or review of a proposal or other response to a Request for Information, Request for Proposal or similar inquiry from the Government Customer or (b) disclose any Nonpublic Military Aircraft Information or Nonpublic Defense Aerostructure Information to any Boeing Military Aircraft Business Personnel, except for the specified groups and Spirit personnel described in Paragraph XII.A of this Order.
7. Spirit Defense Aerostructure Business personnel who have been exposed to a Third-Party Prime's Nonpublic Military Aircraft Information or Third-Party Prime's Nonpublic Defense Aerostructure Information with respect to a particular Competitive Military Aircraft will be subject to a reasonable cooling-off period after the end of the applicable Competitive Pursuit before being allowed to support any Boeing Military Aircraft that is a Competitive Military Aircraft to the Prime Contractor's Competitive Military Aircraft. Any exceptions to the existence and duration of the cooling-off period shall be decided by the Compliance Officer and based on the facts and circumstances of each competition. The cooling-off period may be waived by the Compliance Officer or designee upon request by Spirit Defense Aerostructure Business.
8. Respondents shall:
 - a. Not move members of a Firewalled Spirit Defense Aerostructure Customer Team from one Third-Party Prime Contractor's team to any other Firewalled Spirit Defense Aerostructure Customer Team, for a competing Military Aircraft, so long as that Third-Party Prime Contractor remains in the competition for that Military Aircraft, without prior written consent of the affected Third-Party Prime Contractor(s);
 - b. Maintain records of such transfers referenced in Paragraph XII.B.8.a of this Order during the term of this Order and make them available for inspection by Commission Staff and the Compliance Officer; and
 - c. Notify the Commission and Compliance Officer of any such transfers within 15 days of the transfer;
- C. The Firewalled Spirit Defense Aerostructure Customer Teams shall protect all Nonpublic Military Aircraft Information, such that, absent a Third-Party Prime Contractor's prior written consent, the Firewalled Spirit Defense Aerostructure Customer Teams shall not,

except for the specified groups and Spirit personnel described in Paragraph XII.A of this Order:

1. Disclose any of that Third-Party Prime Contractor's Nonpublic Military Aircraft Information to Boeing Military Aircraft Personnel or to any employee in a Firewalled Spirit Defense Aerostructure Customer Team supporting Boeing Military Aircraft Business or any other Third-Party Prime Contractor, or
 2. Use that Third-Party Prime Contractor's Nonpublic Military Aircraft Information for any purpose other than developing or providing an Offer requested by or made to that Third-Party Prime Contractor, or in supporting the proposal of that Third-Party Prime Contractor in connection with the Offer.
- D. Respondents, as to each separate Firewalled Spirit Defense Aerostructure Customer Team, shall take all steps reasonably necessary to ensure that a Prime Contractor's Nonpublic Military Aircraft Information is kept confidential and protected from unauthorized disclosure and use, including such steps as Respondents would take to protect their own Nonpublic Information and as required pursuant to this Section XII.
- E. The provision of any protected information, technology, or product to the Respondents by any Third Party, or to any Third Party by Respondents, pursuant to this Order shall be subject to appropriate customary confidentiality agreements on the treatment of competitively-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 Persons, including at the FTC, DoW, or a Third-Party Prime Contractor, if they do not have the security clearance required to be eligible to receive such information.
- F. No later than 15 days after the Acquisition Date, Respondents shall submit a detailed plan for complying with the provisions of this Section XII with respect to all current and future Military Aircraft Programs to the Commission and the Compliance Officer.

XIII. DoW Compliance Officer

IT IS FURTHER ORDERED that:

- A. The Under Secretary of War for Acquisition and Sustainment shall appoint a Compliance Officer, who shall be an employee of the United States government not otherwise involved in Military Aircraft Programs or in setting the requirements for or the procurement of Defense Aerostructures, Defense Aerostructure Services, or Military Aircraft. The Compliance Officer shall have the power and authority to oversee compliance by the Respondents with the terms of this Order and will report to the Department of War's designated personnel, which initially will be the Senior Advisor to the Deputy Secretary of War, Economic Defense Unit.
- B. The Compliance Officer shall have broad investigative and remedial powers with respect to issues arising under this Order, as defined below:

1. Investigating any complaint or representation made to the Compliance Officer, 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. Soliciting and accepting comments from Third Parties regarding Respondents' compliance with this Order as the Compliance Officer deems necessary and appropriate;
3. Using other DoW employees or contractors as appropriate;
4. Retaining, at the reasonable cost and expense of Boeing, such consultants, accountants, and other advisors (collectively, "Third-Party Advisors") as are reasonably necessary to carry out the duties and responsibilities under this Section XIII, who shall be solely accountable to the Compliance Officer, and shall have the same access as the Compliance Officer pursuant to Paragraph XIII.C of this Order; *provided, however*, that such Third-Party Advisors shall maintain the confidentiality of all Nonpublic Information and documents of (i) Respondents, subject to terms agreed with Boeing, or (ii) any other Person;
5. Requiring Boeing, by a deadline set by the Compliance Officer, to contract, at Boeing's reasonable cost and expense and upon reasonable terms and conditions, with such Third-Party Advisors identified by the Compliance Officer for the provisions of such services of the Third-Party Advisors to the Compliance Officer pursuant to this Order. In such contract, the DoW shall be named as a third-party beneficiary under the terms of the contract with the right of the Compliance Officer to direct the Third-Party Advisors in performing the Compliance Officer's duties under this Section XIII; and the Third-Party Advisors shall have the same access as the Compliance Officer pursuant to Paragraph XIII.C of this Order; *provided, however*, Boeing may require the Third-Party Advisors to sign a customary confidentiality agreement; *provided further, however*, that such agreement shall not restrict the Third-Party Advisors from providing any information provided by Boeing under the contract to the Compliance Officer or the Commission or Commission staff;
6. Establishing deadlines by when Respondents must fully satisfy any information request from the Compliance Officer or Third-Party Advisors;
7. Ensuring Respondents, in compliance with Section XI of this Order, notify the Compliance Officer and the Commission of any new Defense Aerostructure Business received by Spirit Defense Aerostructure Business;
8. Having notice and review rights over all proposals and contracts between Spirit Defense Aerostructure Business and a Third-Party Prime Contractor related to a Competitive Pursuit or to developing a competing or potentially competing Competitive Military Aircraft;
9. Maintaining visibility of and mediate disputes between Spirit Defense Aerostructure Business and a Third-Party Prime Contractor regarding terms of a confidentiality agreement related to a Competitive Pursuit, and the decision of the Compliance Officer will be binding as to Respondents; and

10. Having notice and review rights of all NBDB price increases in conjunction with the DSW Designee, if the DSW Designee is someone other than the Compliance Officer.
- C. The Compliance Officer (and any persons working with the Compliance Officer) shall not use or disclose any information obtained in the course of performing his or her duties under this Order other than for the purpose of overseeing compliance with this Order. The Compliance Officer (and any persons working with the Compliance Officer) shall fully protect any proprietary, source-selection sensitive or other Nonpublic Information.
- D. To the extent reasonably necessary to perform his or her duties and responsibilities pursuant to this Order, and subject to any legally recognized privilege or other forms of protection of information, the Compliance Officer (and any persons working with the Compliance Officer) shall be authorized to and may, in the presence of counsel for Respondent Boeing:
1. During normal business hours, interview any of Respondents' personnel, upon 3 days' notice to that Respondent and without restraint or interference by Respondents, relating to any matters contained in this Order;
 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;
 3. During normal business hours, obtain access to and inspect any systems or equipment, relating to any matters contained in this Order, to which Respondents' personnel have access;
 4. During normal business hours, obtain access to and inspect any physical facility, building, or other premises, relating to any matters contained in this Order, to which Respondents' personnel have access; and
 5. Require Respondents to provide access to documents, data, and other information, relating to any matters contained in this Order, to the Compliance Officer in such form as the Compliance Officer may reasonably direct and within such time periods as the Compliance Officer may reasonably require.
- Provided, however, nothing in this Order will require Boeing to provide to the Compliance Officer or Third-Party Advisors working at the direction of the Compliance Officer the access described above or the documents, data, and information described above if such access, documents, data, and other information does not relate to either (i) the Boeing Military Aircraft Business; or (ii) the SDAB, except as may be necessary for the Compliance Officer to perform his or her duties under this Order with respect to Paragraph IX.B.4 of this Order.*
- E. Prior to receiving information pursuant to this Order, the Compliance Officer and any Third-Party Advisors working at the direction of the Compliance Officer, will have obtained any security clearances required to receive or review such information.
- F. Respondents shall timely comply with the Compliance Officer's reasonable requests relating to Respondents' compliance with their obligations pursuant to this Order, and the

Compliance Officer shall not unreasonably withhold approval of any request for additional time.

- G. The Compliance Officer shall consult with the Officer of General Counsel of the DoW to ensure that in performing the duties set forth in this Section XIII, the Compliance Officer does not interfere with the integrity of any DoW procurement.
- H. Respondents shall assist the Compliance Officer in satisfaction of his or her responsibilities pursuant to this Order.
- I. Subject to Paragraphs XIII.D and XIII.E of this Order, Respondents shall cooperate with the Compliance Officer and shall take no action to interfere with or to impede the performance of the Compliance Officer in satisfaction of his or her responsibilities.
- J. Nothing in this Order shall alter or limit the rights or responsibilities of the DoW or Respondents under any contracts between the DoW and one or more of the Respondents.

XIV. Develop Compliance Program to Implement Third-Party Prime Contractor Protections

IT IS FURTHER ORDERED that:

- A. Respondents shall develop and implement written procedures and protocols and maintain a system of access and data controls, with the advice and assistance of the Compliance Officer, to comply with the requirements of this Order, which shall include procedures for:
 - 1. Monitoring compliance;
 - 2. Requiring and enforcing compliance with appropriate remedial action in the event of non-compliance;
 - 3. Notifying the Compliance Officer and any Third-Party Advisor of any non-compliance of the requirements of Section XII of this Order.
- B. Respondents shall design, maintain, and operate a Compliance Program to assure compliance with the requirements and prohibitions of this Order, which shall include:
 - 1. Designating an officer or other individual to supervise personally the design, maintenance, and operation of the Compliance Program, and to be available on an ongoing basis to respond to any questions by employees of Respondents;
 - 2. Distributing a copy of this Order to all members of (i) a Firewalled Spirit Defense Aerostructure Customer Team; or (ii) the Boeing Military Aircraft Personnel who are developing a proposal or otherwise preparing for Boeing to compete in a Competitive Pursuit or with a Competitive Military Aircraft.
 - a. Within 30 days of the date this Order becomes final; and
 - b. Annually within 30 days of the anniversary of the date this Order becomes final until this Order terminates;

3. Training of the requirements of this Order for all members of (i) a Firewalled Spirit's Defense Aerostructure Customer Team; or (ii) the Boeing Military Aircraft Personnel who are developing a proposal or otherwise preparing for Boeing to compete in a Competitive Pursuit or with a Competitive Military Aircraft.
 4. The retention of documents and records sufficient to record Respondents' compliance with its obligations under this Section XIV.
- C. Respondents shall bear all of their costs of complying with this Order, excluding the salaries and benefits of United States government employees, or contractors (other than Third-Party Advisors).
- D. Respondents shall not charge the DoW, either directly or indirectly, any of Respondents' costs, referred to in Paragraph XIV.C of this Order, including any Remedial Costs; *provided, however*, that costs referred to in Paragraph XIV.C 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 restrictions of Paragraphs XIV.C and XIV.D of this Order, whether or not such activities are affected by this Order.

XV. Compliance Reports

IT IS FURTHER ORDERED that:

- A. Respondent Boeing shall notify the Commission and its staff, the DoW, and the Monitor, if one is appointed pursuant to Section VI of this Order, of the Acquisition Date no later than 5 days after the Acquisition Date. Respondent Boeing shall notify the Commission via an email to the Secretary of the Commission to ElectronicFilings@ftc.gov, and shall provide notice to Commission staff via email to bccompliance@ftc.gov.
- B. Respondents shall notify Commission staff via email at bccompliance@ftc.gov of each Divestiture Date no later than 5 days after the occurrence of each; and submit each complete Divestiture Agreement to the Commission at ElectronicFilings@ftc.gov and bccompliance@ftc.gov no later than 30 days after the Divestiture Date.
- C. Reporting Requirements for Sections IX-XIV of this Order:
1. Respondents shall submit verified written reports ("compliance reports") in accordance with the following:
 - a. Interim compliance reports 30 days after this Order is issued, 3 months after this Order is issued, 6 months after this Order is issued, and 9 months after this Order is issued;
 - b. Interim compliance reports every 90 days during any active Competitive Pursuit;
 - c. Annual compliance reports one year after the date this Order is issued, and annually for the term of this Order on the anniversary of that date; and

- d. Additional compliance reports as the Commission or its staff may request.
 - 2. Each compliance report shall set forth in detail the manner and form in which Respondents intend to comply, are complying, and have complied with this Order. Conclusory statements that Respondents have complied with their obligations under this Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance:
 - a. The name and status of all Competitive Pursuits and Competitive Military Aircraft programs where Boeing is a competitor or has the capability to compete as a Prime Contractor;
 - b. The identity of all Third-Party Prime Contractors seeking Defense Aerostructures or Defense Aerostructure Services from Spirit Defense Aerostructure Business for any Military Aircraft and the status of such request for each Third-Party Prime Contractor; and
 - c. Such other information as the Compliance Officer may request.
 - 3. As specified in Paragraph X.D of this Order, Respondents will provide to the Compliance Officer and DSW Designee financial records for NBDB.
 - 4. As specified in Paragraph XII.B.2 of this Order, Respondents will provide to the Compliance Officer a roster of all personnel on each Firewalled Spirit Defense Aerostructure Customer Team.
- D. Reporting Requirements for Sections II-VIII of this Order:
- 1. Respondents shall submit verified written reports (“compliance reports”) in accordance with the following:
 - a. Respondents shall file interim Compliance Reports 30 days after this Order is issued and every 30 days thereafter until Respondents have fully complied with the provisions of Sections II, III, and V of the Decision and Order, and Section III of this Order;
 - b. Respondents shall file annual Compliance Reports one year after the date this Order is issued, and annually for the term of this Order on the anniversary of that date; and
 - c. Respondents shall file additional Compliance Reports as the Commission or its staff may request.
 - 2. Each compliance report shall contain sufficient information and documentation to enable the Commission to determine independently whether Respondents are in compliance with this Order. Conclusory statements that Respondents have complied with their obligations under this Order are insufficient. Respondents shall include in their reports, among other information or documentation that may be necessary to demonstrate compliance:

- a. a full description of the measures Respondents have implemented or plan to implement to ensure that they have complied or will comply with each paragraph of this Order;
 - b. a description of the Transitional Assistance Respondents are providing to the Acquirer, including the reason for the Transitional Assistance, the length of time Respondents expect to provide the Transitional Assistance, and an identification of the personnel responsible for overseeing the provision of the Transitional Assistance;
 - c. a description of any Transitional Assistance each Respondent is receiving from the Acquirer, including the reason for the Transitional Assistance, the length of time the Respondent expects to receive the Transitional Assistance, and an identification of the personnel responsible for overseeing the receipt of the Transitional Assistance.
- E. For a period of 5 years after filing a compliance report, each Respondent shall retain all material written communications with each party identified in each compliance report and all non-privileged internal memoranda, reports, and recommendations concerning fulfilling Respondent's obligations under this Order during the period covered by such compliance report. Respondent shall provide copies of these documents to Commission staff upon request.
- F. Respondents shall verify each Compliance Report in the manner set forth in 28 U.S.C. § 1746 by the Chief Executive Officer or another officer or employee specifically authorized to perform this function. If the compliance report is verified by someone other than the Chief Executive Officer, Respondents shall include documentation in the compliance report establishing that the verifier is authorized to verify the compliance report on behalf of the submitting Respondent. Respondent shall file its compliance reports with the Secretary of the Commission at ElectronicFilings@ftc.gov and the Compliance Division at bccompliance@ftc.gov, as required by Commission Rule 2.41(a), 16 C.F.R. § 2.41(a). In addition, Respondents shall provide a copy of each compliance report to the DoW and the Compliance Officer.
- G. The Compliance Officer and DoW shall keep all reports and other information received in connection with this Order confidential.

XVI. Prior Approval

IT IS FURTHER ORDERED that Respondents shall not sell, license, or otherwise convey through subsidiaries or otherwise, without the prior approval of the Commission and DoW, any part or all of NBDB, subject to Section 7 of the Clayton Act.

XVII. DoW Other Authority

IT IS FURTHER ORDERED that Nothing in this Order precludes the DoW from exercising its existing authority, *inter alia*, the Defense Production Act.

XVIII. Change in Respondent

IT IS FURTHER ORDERED that Respondents shall notify the Commission at least 30 days prior to:

- A. The proposed dissolution of The Boeing Company;
- B. The proposed acquisition, merger, or consolidation of The Boeing Company; or
- C. Any other change in Respondent Boeing, including assignment and the creation, sale, or dissolution of subsidiaries, if such change may affect compliance obligations arising out of this Order.

XIX. Access

IT IS FURTHER ORDERED that, for purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and 5 days notice to the relevant Respondent, made to its principal place of business as identified in this Order, registered office of its United States subsidiary, or its headquarters office, the notified Respondent shall, without restraint or interference, permit any duly authorized representative of the Commission:

- A. Access, during business office hours of the Respondent and in the presence of counsel, to all facilities and access to inspect and copy all business and other records and all documentary material and electronically stored information as defined in Commission Rules 2.7(a)(1) and (2), 16 C.F.R. § 2.7(a)(1) and (2), in the possession or under the control of the Respondent related to compliance with this Order, which copying services shall be provided by the Respondent at the request of the authorized representative of the Commission and at the expense of the Respondent; or
- B. To interview officers, directors, or employees of the Respondent, who may have counsel present, regarding such matters.

XX. Purpose

IT IS FURTHER ORDERED that the purpose of this Order to Maintain Assets is to:

A. Maintain the full economic viability, marketability and competitiveness of the Divestiture Assets through its full transfer and delivery to an Acquirer; to minimize any risk of loss of competitive potential for the Divestiture Assets; and to prevent the destruction, removal, wasting, deterioration, or impairment of any of the Divestiture Assets except for ordinary wear and tear.

B. Ensure that Spirit Defense Aerostructure Business continues to provide its services to Third-Party Prime Contractors after the Acquisition on a non-Discriminatory basis and in the same manner and at the same performance level and quality as before the Acquisition and continues to have the financial resources necessary to satisfy current and future demand for Defense Aerostructure Services.

XXI. Term

IT IS FURTHER ORDERED that this Order shall terminate the day after the Decision and Order in this matter becomes final or the Commission withdraws acceptance of the Consent Agreement pursuant to the provisions of Commission Rule 2.34, 16 C.F.R. § 2.34.

By the Commission.

April J. Tabor
Secretary

SEAL

ISSUED: December 2, 2025