

## **ADMINISTRATIVE AGREEMENT**

This Administrative Agreement (“Agreement”) is made between United Technologies Corporation (“UTC”) and the United States Department of the Army (“Army”). The Army, acting through its Suspension & Debarment Official and on behalf of the U.S. Government, including on behalf of the United States Departments of the Navy and the Air Force, has been designated as the lead agency for determining the present responsibility of UTC and its Affiliates under Subpart 9.4 of the Federal Acquisition Regulation (“FAR”).

### **A. PREAMBLE**

1. UTC is a Delaware corporation with offices and headquarters located in Connecticut. UTC’s operating subsidiaries and divisions research, develop, manufacture, and service high-technology products in numerous areas, including aircraft engines; aircraft and spacecraft systems; space propulsion; helicopters; heating, ventilation, and air conditioning; fuel cells; elevators and escalators; fire and security; building systems; and industrial products. Through its aerospace business units, UTC is a U.S. defense contractor.

2. Pratt & Whitney Canada Corp. (“P&WC”), a wholly owned subsidiary of UTC, is a Canadian corporation with headquarters in Longueuil, Quebec. P&WC is an aircraft engine manufacturer that has produced more than 73,000 engines, of which there are currently more than 48,000 engines in service on over 25,000 aircraft operated by some 10,000 operators in 198 countries.

3. Hamilton Sundstrand Corporation (“HSC”) is a wholly owned subsidiary of UTC, incorporated in Delaware, with offices and headquarters located in Connecticut. HSC designs and manufactures technologically advanced aerospace and industrial products, and produces aircraft systems for both commercial and military aircraft. Examples of such aerospace products include electric power generating, distribution, management, and control systems; engine control systems; primary and secondary flight controls and actuation systems; propeller systems; and electronic controls and components.

4. On June 28, 2012, P&WC pleaded guilty in United States District Court for the District of Connecticut to one count of violating the Arms Export Control Act (“AECA”), 22 U.S.C. §§ 2778(b)(2) and (c), and the International Traffic in Arms Regulations (“ITAR”), 22 C.F.R. §§ 127.1 and 127.3, in connection with the export of modified electronic engine control (“EEC”) software to China to be used in the CMH/Z10 helicopter development program, and one count of making false statements to the State Department in voluntary disclosures concerning the EEC software exports, in violation of 18 U.S.C. § 1001(a)(2). In addition, UTC, P&WC, and HSC (the “UTC

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Entities”) entered into a Deferred Prosecution Agreement (“DPA”) with the U.S. Department of Justice. Under the DPA, the Justice Department agreed to defer prosecution (i) of P&WC and HSC on an additional charge of failing timely to notify the State Department of the ITAR-controlled but unlicensed software modification exports to China; and (ii) of HSC and UTC on the charge of making false statements to the State Department with respect to the 2006 voluntary disclosures. The facts underlying the Justice Department resolution described in this paragraph are referred to herein as the “Z10 Matter.”

5. Pursuant to the guilty pleas, P&WC paid a criminal fine of \$4.6 million and forfeited \$2.3 million. Pursuant to the DPA, the UTC Entities paid a penalty of \$13.8 million. In addition, as part of the DPA and in conjunction with the Consent Agreement discussed below, the UTC Entities agreed to the installation of a Special Compliance Official/Independent Monitor (the “Monitor”) for a period of two years. The Monitor is in place and has begun his duties.

6. On June 19, 2012, UTC executed a Consent Agreement with the United States Department of State, Directorate of Defense Trade Controls (“DDTC”), to resolve a Proposed Charging Letter. The Proposed Charging Letter addressed approximately 45 disclosures — almost all of them voluntary — made by UTC business units since 2006, and formally charged 576 violations, including those relating to the Z10 Matter, but also extended to other ITAR-related violations. The Consent Agreement resolved all of the charged violations and the matters addressed under all of the referenced disclosures. Under the Consent Agreement, UTC agreed, among other things, to: (i) pay a \$55 million penalty (\$20 million of which may be suspended if used for qualifying compliance expenditures); (ii) implement further substantial remedial measures to assure adequate compliance resources and training, enhance automation of compliance processes, better safeguard and track access to controlled data in IT systems and removable media, and assure accurate jurisdiction and classification determinations for all hardware and related technical data; (iii) conduct outside audits of its continuing remedial and mitigation actions; and (iv) appoint an outside Special Compliance Official (also to serve as the Justice Department Independent Monitor) to oversee UTC’s compliance with the Consent Agreement and overall ITAR compliance program for at least two years of the four-year agreement. On June 28, 2012, the State Department issued an order (the “Order”) memorializing the resolution and giving the Consent Agreement immediate effect.

7. As acknowledged and catalogued in the DPA, the UTC Entities have undertaken extensive reforms and remedial actions in response to the conduct set forth in the Statement of Facts attached to the DPA. At sentencing, the Justice Department specifically commented on the strength of these reforms and remedial actions as follows:

“[The UTC Entities] have . . . implemented far-reaching and appropriate improvements in their export compliance, at

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significant cost to them. These improvements . . . are not mere window dressing, in the Government's view, but significant, good faith and extensive actions that the companies have taken already . . . to improve their export compliance initiatives, and to ensure that the past violations that bring us here today do not happen again."

8. As acknowledged and catalogued in the Proposed Charging Letter, the State Department similarly considered UTC's "voluntary disclosures and remedial compliance measures as significant mitigating factors when determining the charges to pursue in this matter."

9. Notwithstanding the impending resolution of these matters with the State Department and Justice Department, the UTC Entities recognized that their single largest customer — the U.S. Department of Defense — could consider the conduct underlying the Consent Agreement and DPA as a cause for discretionary suspension and debarment under FAR Subpart 9.4. Furthermore, Section 8125 of Division A, Title VIII of the Consolidated Appropriations Act of 2012, Pub. L. No. 112-74 (Dec. 23, 2011) ("Appropriations Act Section 8125") would prohibit the Defense Department from entering into new contracts with P&WC utilizing FY2012 appropriated funds as a result of P&WC's felony guilty pleas, unless and until the awarding department or agency within the Defense Department made an affirmative determination that further action against P&WC was not necessary to protect the interests of the Government. Accordingly, on June 15, 2012, prior to entering into the agreements to resolve the matters with the State Department and Justice Department, the UTC Entities voluntarily approached the key departments and agencies of the Defense Department in order to demonstrate their present responsibility.

10. The Defense Department thereafter commenced a comprehensive FAR Subpart 9.4 review. Four separate Suspending and Debarring Officials — from the Departments of the Army, Navy, and Air Force, and from the Defense Logistics Agency (each an "SDO" and, collectively, "SDOs") — participated in the review, which lasted more than five months.

11. The UTC Entities made 22 substantive written submissions to the SDOs between June and October 2012. These submissions included voluminous presentations and copies of UTC's policies and programs that have been improved in the years following the conduct underlying the Z10 Matter, such as: UTC's values-based ethics and compliance programs; UTC's risk identification and risk management processes; UTC's government disclosure processes; evaluations by the Defense Contract Management Agency; ethics training and survey results; and answers to numerous questions posed by the SDOs.

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12. Senior management officials from the UTC Entities met with the SDOs on July 19 and September 7, 2012. The latter meeting included the presidents of Sikorsky Aircraft Corporation, Pratt & Whitney, P&WC, and the Power, Controls & Sensing Systems segment of UTC Aerospace Systems (formerly HSC), which collectively account for a substantial majority of UTC's business with the Defense Department in FY2012 and all the UTC entities involved in either the Z10 Matter or related State Department administrative proceedings regarding UTC's overall ITAR compliance. Each of the business unit presidents described the lessons their companies had learned from the Z10 Matter and improvements they have undertaken in their ethics and compliance programs.

13. Dr. Pat Harned of the Ethics Resource Center ("ERC") also participated in the September 7 meeting. She told the SDOs about UTC's effective ethics program and the impressive improvements that UTC had made to its ethics program over time. Indeed, the ERC awarded UTC and its Chairman & Chief Executive Officer ("CEO") the Stanley C. Pace Ethics and Leadership Award. As Dr. Harned explained, the Pace Award was given in recognition of UTC's "accomplishments in ethical business management and for demonstrated moral vision in the pursuit of ethical conduct." In giving the Pace Award to UTC, Dr. Harned recognized UTC's quantitative and systematic means of evaluating and rewarding ethical conduct and said that other companies should learn from UTC's program.

14. On September 19, 2012, based on its review of the submissions and the meetings attended by UTC's business unit presidents, the Defense Logistics Agency determined that the UTC Entities are presently responsible, and that further action was not necessary to protect the government's interests pursuant to Appropriations Act Section 8125.

15. Officials representing the SDOs made three site visits to Pratt & Whitney, P&WC, and Sikorsky Aircraft Corporation on September 21 and 28, and on October 2 and 3, 2012. These site visits included meetings not only with senior management of the business units, but also with employees at every level.

16. The SDO of the Army, as "Lead Agency" under the procedures of the Interagency Suspension & Debarment Committee ("ISDC"), has determined that the terms and conditions of this Agreement provide adequate assurances that the interests of the Government will be sufficiently protected to preclude the necessity of debarment or suspension of Contractor or any of its current directors, officers, or employees.

## **B. DEFINITIONS**

1. "Affiliate" has the meaning set forth in FAR 9.403.
2. "Contractor" refers to UTC and its Affiliates.

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3. “Effective Date” refers to the date on which this Agreement is fully and finally executed by all parties hereto.

4. “Government” refers to any department, agency, division, independent establishment, or wholly owned corporation of the United States Government.

5. “Independent Cause for Suspension or Debarment” refers to a reason or basis for such action not directly related to conduct set forth in the Preamble or any document referred to in the Preamble, so long as it is a legally sufficient reason or basis within the scope of FAR Subpart 9.4.

**C. CONTRACTOR RESPONSIBILITY PROGRAM AND VERIFICATION MEASURES**

1. **Contractor Responsibility Program.** In the years that have passed since the conduct underlying the Z10 Matter occurred, UTC has undertaken company-wide efforts to strengthen its values-based ethics and compliance program (the “Program”), which provides the institutional means for maintaining its present responsibility as a government contractor. The elements of UTC’s Program are outlined in this Section C.1. UTC hereby commits during the term of this Agreement to maintain the Program.

(a) Code of Ethics. UTC has established and continues to have in place corporate compliance and ethics policies, programs, procedures, and training as part of its ongoing business practices.

(b) Management Involvement and Overall Integration of Ethics and Compliance Program

(i) Board of Directors. UTC’s Board of Directors, directly and through its Audit Committee, assesses the activities and responsibilities of the ethics and compliance program, including compliance activities.

(ii) Audit Committee. Pursuant to its charter, the Audit Committee of UTC’s Board of Directors:

(A) Discusses any illegal acts discovered by the independent auditor during the course of its work and its conclusions with respect to such illegal acts;

(B) Obtains reports from management and UTC’s senior internal auditing executive regarding compliance with applicable laws and regulations, and with UTC’s Code of Business Conduct and Ethics;

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- (C) Establishes procedures for the receipt, retention, and treatment of complaints received by UTC regarding accounting, internal accounting controls, or auditing matters, and the confidential, anonymous submission by employees of concerns regarding questionable accounting or auditing matters;
  - (D) Discusses with management and the independent auditor any correspondence with regulators or governmental agencies and any published reports which raise material issues regarding UTC's financial statements or accounting policies; and
  - (E) Discusses with UTC's General Counsel legal matters that may have a material impact on the financial statements or UTC's compliance policies.
- (iii) Vice President, Global Compliance. UTC recently appointed a Vice President, Global Compliance to oversee its Ethics and Compliance Program. This new position was filled from outside the company by a former Associate Attorney General of the United States and United States Attorney for the District of Connecticut with significant law enforcement, ethics, and compliance experience. The Vice President, Global Compliance oversees the UTC Business Practices Organization and compliance matters involving all of UTC's businesses worldwide. In so doing, the Vice President, Global Compliance has direct access to UTC's Chairman & CEO and the Chair of the Audit Committee of UTC's Board of Directors, and reports on a dotted-line basis to the Audit Committee of UTC's Board of Directors.
- (iv) Enterprise Risk Management. UTC has adopted an Enterprise Risk Management ("ERM") process. Through ERM, compliance risks are identified by management and then rated and ranked by the functional departments and business units, based on a combination of a given risk's likelihood and potential impact. Although ERM is a continuous process, there is an annual cycle for structured risk reviews, discussions, and mitigation decision-making, including at operation management meetings chaired by UTC's Chairman & CEO. UTC's ERM Council meets annually to synthesize the outputs from the individual

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functional departments and business units. Based on its review of this consolidated data, the ERM Council then makes recommendations to UTC's Presidents Council, which includes UTC's Chairman & CEO, the Presidents of UTC's major business units, and senior corporate staff. This information is then presented annually to UTC's Board of Directors.

- (v) Business Practices Organization. UTC has instituted an enterprise-wide Business Practices Organization, which consists of almost 500 Business Practices Officers, both full-time and part-time located throughout the world. Business Practices Officers provide guidance regarding the application and interpretation of UTC's Code of Ethics, facilitate ethics communications, organize training for ethics and compliance, organize risk assessment and mitigation, and assure that investigations are conducted professionally and in a timely manner. They report directly to the regional and local business leaders they are assigned to support and, on a dotted-line basis, through the Business Practices chain to UTC's Vice President, Global Compliance.
- (vi) Ombudsmen. UTC has three Ombudsmen who act as intermediaries for employees and third parties to use when sharing information with or seeking answers from UTC's management. The Ombudsmen confirm that personal identifying information is removed from confidential communications and then refer these communications to management for review and investigation. The Ombudsmen also ensure that the responses provided by management are fair and complete and that those responses are transmitted in a timely manner. In discharging their responsibilities, the Ombudsmen abide by three central principles: (1) confidentiality — they protect the identity of the person who raises an issue; (2) neutrality— they do not engage in advocacy on behalf of either the requestor or management; and (3) independence — they ensure that, as intermediaries, they remain separate from management.
- (vii) DIALOG. UTC maintains a DIALOG program by which employees and third parties can bring potential compliance risks to the company's attention. A paper DIALOG system exists, but nearly all of the approximately 1,500 inquiries

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received annually are processed through an electronic eDIALOG platform that is web-based, encrypted, and hosted outside of UTC. Users may create their own user ID and password to use the eDIALOG system — allowing them to report information anonymously, make inquiries of management, and receive information in response. Communications received through the DIALOG platform are sanitized of personal identifying information by a DIALOG coordinator located at UTC's headquarters and then are provided to management for a response and action, or — for more complex or sensitive communications requiring additional investigation — they are referred to an Ombudsman to facilitate anonymous and confidential interaction with management.

(c) Ethics and Compliance Training

- (i) Values-Based Training. UTC requires and provides incentives to its supervisors to provide regular, values-based training to their subordinates throughout the year. In addition, the business unit presidents require their supervisors to train their subordinates on a specific, timely, and important ethics message just about every year.
- (ii) Ethics and Compliance Training. UTC offers additional ethics and compliance training online, geared to each employee's job responsibilities. The online training is targeted to individuals based on their tenure with the company, job responsibilities, and results of risk assessments and mitigation strategies. Online training modules consist of 346 unique courses (up from 36 in 2004), totaling 2,171 courses in 30 languages, many of them electives that employees may select, developed for UTC and its business units by an ethics consulting firm at an annual cost to UTC of \$2.3 million. In 2012 YTD, 111,000 users completed 594,000 modules, and in 2011, 95,000 salaried employees completed 579,000 modules. At certain times, UTC supplements the online training with live, "in person" ethics and compliance training to its employees and third parties (e.g., sales representatives, distributors) as warranted, led by various subject-matter experts within or outside the company. Many UTC business units also participate in annual ethics "stand-down" days where employees dedicate a full day to

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discussions and presentations on ethics and compliance matters.

- (iii) Frequency of Training. UTC expects that values-based ethics training occur annually, and its use of the Presidents' Ethics Objectives encourages managers to direct their employees to take the required online modules and any supplemental live training.
  
- (d) Government Contracting Policies and Procedures. UTC has implemented government contracting compliance policies and procedures setting forth UTC's compliance obligations under relevant laws and regulations, including mechanisms for providing timely and accurate disclosures to the Government.
  - (i) Ethics Advantage. UTC's Ethics Advantage system, used for tracking compliance investigations, contains a series of fields that address specific compliance concerns, which can then be used to identify specific matters that should be elevated within the company. For instance, if the "FAR Reviewable" box is checked for a matter, which is the default for any new entry, the Vice President, Global Compliance or his designee must review the matter to determine whether it concerns significant contract overpayments, violations of federal criminal law involving fraud, conflict of interest, bribery and gratuities, or violations of the civil False Claims Act, the disclosure of which is mandatory under the FAR. New matters for which the "FAR Reviewable" box has been checked also are referred to legal counsel for further review.
  
  - (ii) Disclosure Committee. UTC created a disclosure committee in 2008 as part of the company's revamped disclosure process in response to the FAR "Mandatory Disclosure" interim regulation. Representatives from the relevant functional departments at UTC headquarters, including Global Compliance and Government Accounting, and senior government contract compliance attorneys from the aerospace business units meet quarterly to review any compliance matters that have been identified as potentially requiring a disclosure to the Government. Although they may come from any source, the bulk of the matters considered have been entered into the Ethics Advantage database and flagged for the group's consideration using the "FAR Reviewable" and

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“Significant Matter” fields. These matters may not be closed until they have been reviewed by Global Compliance to determine whether a disclosure is required. Such review typically occurs in conjunction with the meeting of the disclosure committee.

- (iii) Section 18 of UTC’s Corporate Policy Manual. Section 18 of the UTC Policy Manual sets forth UTC’s policy regarding disclosures of legal, administrative, accounting, contract compliance, and similar errors that arise in the conduct of the company’s commercial and government business. As set forth in UTC’s submissions in this matter and in this Agreement, UTC has committed to revise Section 18 to require disclosure of matters specified in Section C.2(c)(i) of this Agreement.
- (e) Management Training Program. UTC provides training to managers regarding ethical behavior and adherence to the corporate compliance program. UTC also incorporates a mandatory “Ethics Competency” in its Performance Feedback Tool software, requiring managers to rate their subordinates each year on their demonstration of ethical leadership and performance within the organization. In addition, UTC incorporates an “Ethics Objective” in its Performance Feedback Tool software, which is designed to hold executives accountable for driving ethics down through their organizations. Managers’ compensation is based in part on performance with regard to ethics and compliance.
- (f) Continuous Improvement. Since 2005, UTC has conducted bi-annual employee surveys addressing, among other topics, various ethics topics. UTC’s overall ethics scores have improved with every survey. In 2013, UTC will again conduct this survey and agrees to provide the results of the ethics portion of the survey to the SDOs, as well as an analysis of those results.
- (g) Defense Industry Benchmarking Survey. UTC has also participated in the annual Defense Industry Benchmarking Survey issued by the ERC. UTC will do so again in 2013 and agrees to furnish the SDOs with a copy of UTC’s results once received from ERC.

2. **Verification Measures.** The SDOs recognize that (i) the State Department and the Justice Department already have appointed the Monitor to oversee UTC’s remedial and mitigation measures following the Z10 Matter and other export control

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violations; and (ii) the State Department has required independent audits by a third party to be conducted under the Monitor's supervision. UTC and the SDOs agree that the Army, Air Force, and Navy can benefit from increased visibility into the Monitor's and independent auditor's oversight and findings. UTC accordingly commits to provide to the Army during the term of this Agreement a copy of all Monitor reports in its possession submitted to the State Department and or the U.S. Attorney's Office for the District of Connecticut ("U.S. Attorney's Office") pursuant to the Consent Agreement or the DPA, as set forth in Section C.2(a)(iii) below; a copy of all audit reports in its possession submitted to the State Department, as set forth in Section C.2(b)(iv) below; and additional voluntary reporting and certification, as set forth in Section C.2(c) below.

- (a) The Monitor. The Consent Agreement and DPA set forth an extensive, detailed scope of work for the Monitor to verify UTC's compliance with the export control laws and regulations as well as the terms of the Consent Agreement and DPA. The scope of the monitor's duties are outlined below.
  - (i) Consent Agreement. As set forth in the Consent Agreement, the Monitor has the following duties and responsibilities:
    - (A) Policy and Procedures. The Monitor shall monitor UTC's AECA and ITAR compliance programs with specific attention to the following areas:
      - (i) Policies and procedures for the identification, including export control jurisdiction determination, and marking of defense articles and defense services;
      - (ii) Policies and procedures for the identification of ITAR-controlled technical data, to include the use of derivative drawings or derivative technical data, and marking thereof;
      - (iii) Policies and procedures for maintenance and protection of and access to technical data on UTC's computer networks or other electronic methods of storage and transfer;
      - (iv) Policies and procedures for the export, re-transfer and re-export of defense articles and services;

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- (v) Policies and procedures for the transfer and retransfer of technical data;
- (vi) Policies and procedures for the management and handling of Department authorized agreements;
- (vii) Policies and procedures for incorporating AECA and ITAR compliance into UTC's management business plans at the senior executive level;
- (viii) Policies and procedures for preventing, detecting and reporting AECA and ITAR violations;
- (ix) Policies and procedures for encouraging UTC's employees to report ITAR compliance problems without fear of reprisal. These policies and procedures should promote UTC's existing programs (Ombudsman/DIALOG, Business Practices Office, and other channels) as reporting mechanisms safe from reprisals and as a means to document the issue to be looked at, management's action, and the result of any action taken by management in resolving the issue;
- (x) Policies and procedures for tracking research and development work to ensure that all such work on defense articles, including technical data, is in compliance with the AECA and ITAR from conception to completion of the project;
- (xi) Policies and procedures for ensuring that exports of classified technical data and classified defense articles are in full compliance with section 125.3 of the ITAR; and
- (xii) Policies and procedures identified as necessary by UTC or the Monitor during the course of the Consent Agreement, as approved by the

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Director, Office of Defense Trade Controls  
Compliance ("DTCC").

- (B) Specific Duties. The Monitor shall oversee the following specific areas:
- (i) UTC's implementation of the compliance measures required by the Consent Agreement;
  - (ii) UTC's corporate oversight of ITAR compliance for performance of its responsibilities under the Consent Agreement and the Order in a timely and satisfactory manner;
  - (iii) The adequate allocation of resources to ITAR compliance, including the maintenance of adequate compliance staffing levels at UTC and all operating divisions, subsidiaries, and business units that involve ITAR-related activities;
  - (iv) Account expenditures for remedial compliance measures in coordination with UTC's Chief Financial Officer ("CFO");
  - (v) Enhancing incorporation of ITAR compliance into UTC's management business plans at the senior executive level;
  - (vi) UTC's measures for reporting violations and potential violations of the AECA and ITAR to DTCC either through voluntary disclosure or in response to a directed disclosure, including decision making processes regarding, and drafting of, submissions of same; and
  - (vii) Implementation of policies and procedures encouraging UTC's employees to report ITAR compliance problems without fear of reprisal.

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- (C) Reporting. The Monitor is responsible for the following reporting requirements:
- (i) Tracking, evaluating and reporting on UTC's review of ITAR violations and compliance resources;
  - (ii) Providing to the Director, DTCC within six months from the date of the Order, and then semiannually thereafter, status reports on ITAR compliance program enhancements and resource levels and their impact on or benefit to ensuring ITAR compliance throughout UTC. The reports will include status updates regarding UTC's automated export compliance system;
  - (iii) Providing a yearly accounting report certified as correct by the CFO of these expenditures to UTC's Senior Vice President and General Counsel or other senior official as appropriate, and Director, DTCC; and
  - (iv) Providing reports to the Board of Directors or appropriate committee thereof, the Senior Vice President and General Counsel, and the Director, DTCC, concerning UTC's compliance with this Consent Agreement and the Order, as well as with such other pertinent U.S. Government munitions authorizations and licenses, as well as resource allocation, guidance, and the like then in force pertaining to UTC's ITAR-regulated activities. These reports shall include findings, conclusions, and any recommendations necessary to ensure strict compliance with the ITAR and describe the status of implementation of previous recommendations advanced by the Monitor. These reports may, in a separate annex, also include any relevant comments or input by UTC. Any such reports shall not affect UTC's use of the Voluntary Disclosure procedures set forth in section 127.12 of the ITAR and any

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benefits gained therefrom. The first report shall be provided six months from the date of the Order, and semiannually thereafter during the remainder of the Monitor's period of appointment.

- (ii) DPA. As set forth in the DPA, the Monitor shall, consistent with the Consent Agreement:
- (A) Monitor the UTC Entities' compliance with the DPA and with the AECA, the ITAR, the Export Administration Act ("EAA"), the Export Administration Regulations ("EAR") and the International Emergency Economic Powers Act ("IEEPA"); review the UTC Entities' policies and procedures designed to prevent violations of the AECA, ITAR, EAA, EAR, and IEEPA; and make recommendations necessary to ensure that the UTC Entities comply with the DPA and the AECA, ITAR, EAA, EAR, and IEEPA. Responsibility for designing an ethics and compliance program that will prevent such violations shall remain with the UTC Entities, subject to the Monitor's input, evaluation and recommendation.
  - (B) Have access to information concerning the compliance policies and procedures of the UTC Entities, and shall reasonably exercise such power and authority and carry out the duties and responsibilities of the Monitor as set forth in the DPA in a manner consistent with the purpose of the DPA and the separate and independent Consent Agreement between the UTC Entities and the United States Department of State.
  - (C) With the understanding that nothing in the DPA shall be interpreted to compel waiver of any applicable attorney-client privilege or work product protection, have full and complete access to the UTC Entities' personnel, books, records, documents, facilities, and technical information relating to compliance with the DPA and with federal export laws and regulations, including the AECA, ITAR, EAA, EAR, and IEEPA,

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and to the compliance policies and procedures of the UTC Entities.

- (D) Have sufficient staff and resources, as reasonably determined by the Monitor, to effectively monitor the UTC Entities' compliance with the DPA.
- (E) Have the right to select and hire outside expertise if necessary to effectively monitor the UTC Entities' compliance with the DPA.
- (F) Monitor the information received by the existing employee reporting mechanisms (Ombudsman / DIALOG, Business Practices Office, and other channels) through which employees can notify, including on a confidential basis, appropriate personnel of any concerns regarding compliance with export laws and regulations, including the AECA, ITAR, EAA, EAR, and IEEPA.
- (G) Work with, and as requested by, the United States Department of Justice; the United States Department of Commerce, including the Office of Export Enforcement, and the United States Department of State, including DDTC.
- (H) Report to the U.S. Attorney's Office as soon as any violations of the DPA are detected and, on at least a semi-annual basis, report to the U.S. Attorney's Office in writing as to the UTC Entities' compliance with the DPA and the implementation and effectiveness of the internal controls, reporting, disclosure processes and related export compliance functions of the UTC Entities. These semi-annual reports shall: (1) include conclusions and any recommendations necessary to ensure compliance with the DPA, the AECA, ITAR, EAA, EAR, and IEEPA; (2) state whether the Monitor has encountered any difficulties in executing his or her duties and responsibilities assigned by the DPA; (3) describe any and all instances of non-compliance; and (4) advise on progress in implementing previous recommendations. This reporting requirement may be satisfied by incorporating information from, or

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providing the U.S. Attorney's Office with a copy of, reports prepared pursuant to the reporting requirements of the Monitor as required under UTC's Consent Agreement with the United States Department of State, so long as the information required by this paragraph is included in any such report to the Office. The Office may consider the Monitor's recommendations and the UTC Entities' actions in response in determining whether the UTC Entities have fully complied with their obligations under the DPA.

- (iii) Submission of Monitor Reports to the Army. UTC shall provide the Army during the term of this Agreement with a copy of all reports in its possession submitted to the State Department or the U.S. Attorney's Office pursuant to the Consent Agreement or the DPA, including any such reports described in this Section C.2(a).
  
- (b) Independent Audits. In addition to the Monitor, the Consent Agreement requires UTC to have two audits performed during the term of the Consent Agreement.
  - (i) UTC must have the first audit conducted by an outside consultant with expertise in AECA/ITAR matters, approved by the Director, DTCC. The audit will be conducted under the supervision of the Monitor. The audit shall provide a thorough assessment of the effectiveness of UTC's implementation of all measures set forth in the Consent Agreement with focus on those actions undertaken to address the compliance problems identified in the Proposed Charging Letter; the policies, procedures, and training established by UTC; and such other areas as may be identified by the Monitor or the Director, DTCC. Additionally, the audit will assess the overall effectiveness of UTC's ITAR compliance programs.
  
  - (ii) Within six months after the date of the Order, a draft audit plan for the first audit will be submitted to the Director, DTCC for review and comment. Within 12 months after the date of the Order, the audit will be completed and a written report containing recommendations for improvements with respect to Consent Agreement measures or compliance with the AECA or the ITAR more generally. The report will be

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submitted by UTC to the Director, DTCC along with UTC's plan on how it will address those recommendations.

- (iii) Subsequently, UTC shall have a second audit conducted by an outside consultant with expertise in AECA/ITAR matters, approved by the Director, DTCC to confirm whether UTC addressed the compliance recommendations from the initial audit report. The second audit will be conducted under the supervision of the Monitor. Within 36 months after the date of the Order, a draft audit plan for the second audit will be submitted to the Director, DTCC for review and comment. Within 42 months after the date of the Order, the second audit will be completed and a written report confirming whether UTC addressed the compliance recommendations from the initial audit report as well as his/her recommendations where there were any deficiencies. The report will be submitted by UTC to the Director, DTCC along with UTC's plan on how it will address those recommendations.
  - (iv) UTC shall provide the Army during the term of this Agreement with a copy of all audit reports in its possession submitted to the State Department or the U.S. Attorney's Office pursuant to the Consent Agreement or the DPA, including any such reports described in this Section C.2(b).
- (c) Additional Verification Commitments. In addition to the Monitor and the independent audits, UTC agrees to the following additional verification measures.
- (i) Mandatory Reporting. UTC, for itself and on behalf of its majority-owned or controlled subsidiaries (each a "UTC Company"), hereby commits to provide a copy of all mandatory disclosures required by FAR 52.203-13(b)(3), when such disclosures identify an actual or potential financial impact in excess of \$50,000 to U.S. Government contracts (including first-tier subcontracts thereunder), to the Army SDO and to the SDO of the federal agency or department having the largest total dollar value of contracts with the disclosing UTC Company during the preceding calendar year. In addition, UTC commits, for the duration of this Agreement, to report to the Army on no less than a quarterly basis the types of matters listed below if known to UTC's

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Vice President, Global Compliance, through the processes set forth in Section C.1 of this Agreement or otherwise:

- (A) U.S. federal or state criminal investigations in which UTC has been informed either that a UTC Company is a target or subject of such an investigation, or that an employee of a UTC Company is a target or subject of the investigation where it relates to allegations of fraud or corrupt practices;
  - (B) Formal criminal proceedings initiated against a UTC Company, and formal criminal proceedings initiated against a UTC employee or first-tier subcontractor relating to allegations of fraud or corrupt practices, by the filing of a charging instrument in a court of law by any U.S. federal, U.S. state, or foreign government, and any subsequent felony convictions of, or deferred prosecution agreements entered into by, a UTC Company or any such UTC employee or first-tier subcontractor related thereto;
  - (C) Civil litigation filed by the U.S. federal government (including under the federal False Claims Act), U.S. state government, or foreign government against a UTC Company or any UTC employee related to allegations of fraud or corrupt practices;
  - (D) U.S. federal administrative proceedings bearing on a UTC Company's present responsibility to contract with the U.S. government pursuant to FAR Subpart 9.4; and
  - (E) Quarterly updates on the status of matters reported under (A)-(D) of this Section C.2(c)(i).
- (ii) Management Certification. UTC's Chairman & CEO shall sign an annual compliance certification. The annual compliance certification shall state as follows:

"I, [NAME], Chairman & Chief Executive Officer of United Technologies Corporation, do hereby certify that, to the best of my knowledge and belief, as of December 31, [YEAR], UTC, its subsidiaries, and its majority-owned or controlled

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affiliates have reported to the Army Suspension and Debarment Official all matters subject to reporting under Section C.2(c)(i) of the Administrative Agreement.”

The annual compliance certification shall be signed and dated. The executed annual compliance certification shall be forwarded to the SDO no later than the 31st of March for each year the Agreement is in effect.

- (iii) Independent Government Contracts Consultant. UTC will retain, within four months of the Effective Date, a qualified third-party (the “Independent Government Contracts Consultant”) to review UTC’s existing government contracting processes, including the government contracts disclosure process at UTC and its aerospace business units, as well as staffing at such entities of government contracts compliance and investigative responsibilities. The Independent Government Contracts Consultant shall be acceptable to the Army. The Independent Government Contracts Consultant shall issue written recommendations addressing the above topics no later than December 31, 2013. UTC will promptly provide a copy of the report to the Army SDO. UTC will submit to the Army SDO its response to — and, where appropriate, action plan for implementation of — the recommendations, within 60 days after the issuance of the report. UTC will report at least annually on its progress in implementing the appropriate recommendations.
- (iv) Meetings with Army SDO. Every six months after the Effective Date, UTC’s Vice President, Global Compliance will meet with the Army SDO or a designee, at the office of the Army SDO, to discuss the status of UTC’s compliance with the Agreement, the operation of the Contractor Responsibility Program, matters reported under Section C.2(c)(i), and any other matter of mutual interest.

**D. GENERAL TERMS AND CONDITIONS**

1. **Term of Agreement**. This Agreement shall be effective for a period of three years commencing from the Effective Date. Upon the completion of the second year of this Agreement, UTC may request a review of its performance under the Agreement and ask the Army SDO for a determination that UTC has fulfilled its obligations under this Agreement. The decision concerning the fulfillment of these

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obligations shall be at the sole discretion of the Army SDO, made after a thorough and good faith review of the request and specific consideration of the level of cooperation under sections D.16 and D.18, below. In addition, at any time after the completion of the second year of the Agreement, UTC may present information for consideration by the Army SDO regarding its performance under the Agreement and request a reconsideration of the Army SDO's decision to maintain the Agreement in force.

2. **Findings of Present Responsibility.** Based upon the present responsibility presentations described in the Preamble and the further commitments made by UTC in this Agreement, the Army, acting as Lead Agency, has determined that suspension or debarment of Contractor or any of its current directors, officers, or employees, for the misconduct specifically addressed by this Agreement is not necessary to protect the Government's interests under FAR Subpart 9.4. This determination is intended to enable other departments and agencies of the U.S. government to rely upon it for their respective determinations as to P&WC pursuant to Appropriations Act Section 8125 or any similar provision of federal law.

3. **Notification to Employees of this Agreement.** No later than January 15, 2013, UTC will ensure that this Agreement is posted prominently on relevant internal websites.

4. **Unallowable Costs.** All costs, as described in FAR 31.205-47, incurred by Contractor in connection with the Government civil or administrative actions related to alleged violations described in the Section A of this Agreement shall be deemed unallowable costs, direct or indirect, for Government contract purposes. These unallowable amounts shall be accounted for by Contractor in accordance with Cost Accounting Standard 405, Accounting for Unallowable Costs.

5. **Allowable Costs.** The costs of all self-governance normally required under FAR 9.104-1 and FAR 3.10, including the compliance and ethics programs, activities, and offices in existence as of the Effective Date and which are continued by the terms of this Agreement shall be allowable costs to the extent otherwise permitted by law and regulation.

6. **Modifications of This Agreement.** Any requirements imposed on UTC by this Agreement may be discontinued by the Army at its sole discretion. Other modifications to this Agreement may be made only in writing and upon mutual consent of the parties to this Agreement.

7. **Approvals.** Where this Agreement requires approval by the Army, or other action or response by the Army, the Chief, Procurement Fraud Branch or his/her designee, will normally provide such action. This does not restrict the ability of the SDO to take such action as he may elect.

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8. **Business Relationships with Suspended or Debarred Entities.** UTC shall not knowingly subcontract or enter into any business relationship in support of a Government prime contract with any individual or business entity that is listed on any public website as being debarred, suspended, or proposed for debarment. In order to implement this provision, UTC shall make reasonable inquiry into the status of any such potential business partner, to include, at a minimum, review of the GSA's System for Award Management.

9. **Public Document.** This Agreement is a public document, which will be announced on the publicly accessible Federal Awardee Performance and Integrity Information System.

10. **Release of Liability.** Contractor releases the United States, its instrumentalities, agents, and employees in their official and personal capacities, of any and all liability or claims, monetary or equitable, arising out of the negotiation of, and entry into, this Agreement.

11. **Legal Proceedings.** UTC will provide to the Army within 30 days of the Effective Date, a listing and status of all known matters subject to reporting under Section C.2(c)(i) of this Agreement.

12. **Information Sharing.** Contractor agrees that the Army, at its sole discretion, may disclose to any Government department or agency any information, testimony, document, record, or other materials provided pursuant to this Agreement. Such disclosures shall be subject to 18 U.S.C. § 1905. The Army acknowledges that Contractor asserts that submissions made to date include confidential or proprietary business or financial information ("Current Protected Information"), future submissions may include confidential, proprietary, privileged, or otherwise protected information ("Future Protected Information"), and Contractor has stated an interest in maintaining the confidentiality of Current Protected Information and Future Protected Information. If Contractor believes that any such submissions contain Future Protected Information, Contractor shall identify the relevant information or materials as such at the time of production. The Army agrees that it will maintain the confidentiality of, and will not disclose or disseminate, Current Protected Information or Future Protected Information without Contractor's consent, except that the Army may release such information to another government department or agency, to the extent that the Army determines, in its sole discretion, that such disclosure is necessary to fulfill its duties and responsibilities or required by law. The Army agrees that, in the event it determines that it is required by law to disclose Current Protected Information or Future Protected Information to any person outside of the Government, or in the event that it determines that it will file any Current Protected Information or Future Protected Information publicly in any judicial proceeding, the Army will provide notice of such determination to Contractor at least 14 calendar days in advance of any such disclosure and will not disclose such Current

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Protected Information or Future Protected Information until Contractor has had a period of 14 calendar days to object to such disclosure. If the Army determines that disclosure is required notwithstanding Contractor's objection, the Army will not disclose such information until Contractor has had at least 14 calendar days to seek judicial relief from such disclosure. Nothing in this Section D.12 shall be construed to impose any obligations on the Army that are contrary to applicable law or regulation, including the Freedom of Information Act.

13. **Scope of This Agreement – Suspension and Debarment for Independent Cause.** This Agreement in no way restricts the authority, responsibility, or legal duty of the Army, or any other federal agency, to consider and institute suspension or debarment proceedings against Contractor based upon information constituting an Independent Cause for Suspension or Debarment. The Army or any other federal agency may, in its sole discretion, initiate such proceedings in accordance with the FAR Subpart 9.4. The Army reserves the right to require additional protective measures or modifications of this Agreement if an Independent Cause for Suspension or Debarment should arise. Failure to institute such proposed measures may constitute an Independent Cause for Suspension or Debarment of Contractor in accordance with FAR Subpart 9.4, assuming that cause provides a legally sufficient basis for suspension or debarment.

14. **Survival of This Agreement.** This Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and assigns, unless the new owners request and show good cause why it should not be applicable to their operations. Bankruptcy proceedings shall not prevent or stay the enforcement of this Agreement or any debarment proceedings the Army deems to be appropriate should the UTC fail to comply with the terms of this Agreement, or engage in such other conduct that is an Independent Cause for Suspension or Debarment.

15. **Truth and Accuracy of Submissions.** UTC represents that all written materials and other information supplied to the Army by its authorized representatives during the course of discussions with the Army preceding this Agreement are true and accurate in all material respects, to the best of UTC's information and belief, and understand that false statements are punishable under Title 18, United States Code, Section 1001.

16. **Access to Books, Records, and Personnel**

- (a) During the term of this Agreement and subject to Section D.18 of this Agreement, the Army Procurement Fraud Branch ("PFB") and/or its designee(s) shall have the opportunity to review the books, records, documents, materials, and reports of Contractor that directly relate to compliance with this Agreement, applicable federal

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procurement laws and regulations, and matters reported under Section C.2(c)(i) of this Agreement.

- (b) During the term of this Agreement, Contractor agrees to provide PFB and/or its designee(s), upon reasonable request, with a presentation of factual findings in connection with any internal investigation of matters reported under Section C.2(c)(i) of this Agreement.
- (c) During the term of this Agreement, PFB and/or its designee(s) shall also have the opportunity to interview, at a location practicable and in consultation, as necessary, with other U.S. government departments or agencies, any Contractor employee for the purpose of evaluating compliance with this Agreement, applicable federal procurement laws and regulations, and matters reported under Section C.2(c)(i) of this Agreement.
- (d) The interviews and materials described in Section D.16(a) and (c) of this Agreement shall be made available to PFB and/or its designee(s) at company offices at reasonable times. UTC's obligation under this Agreement with respect to employee interviews is limited to making its employees available for an interview at their place of employment during normal business hours. The individual employee shall have the right to determine whether or not to submit to an interview. To the extent it is permitted to do so by law, regulation, or policy, the Army shall protect Contractor's confidential and proprietary business information from public disclosure.
- (e) Neither PFB nor its designees shall copy or remove Contractor's technical or other proprietary data without Contractor's permission.
- (f) On request from PFB or its designee, Contractor shall provide contact information or the last known mailing address for any former employee of Contractor, except that if precluded from such disclosure by law, Contractor agrees to forward any correspondence from Army PFB to any such employee at the employee's last known mailing address, and to verify such transmission to the Army SDO in writing.

17. **Violations of this Agreement.** Any material violation of this Agreement that is not corrected within 30 days from the date of receipt of notice from the Army may constitute an Independent Cause for Suspension or Debarment if such violation would

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make Contractor not presently responsible. If correction is not possible within 30 days, UTC shall present an acceptable plan for correction within that 30-day period. If an acceptable plan for correction has not been submitted within the 30-day period, the Army may choose to initiate suspension or debarment proceedings in accordance with FAR Subpart 9.4. Alternatively, in the event of any noncompliance, the Army may in its sole discretion extend this Agreement for a period equal to the period of noncompliance.

18. **No Waiver of Contractor Rights, Privileges, or Protections.** Contractor does not, by this Agreement or otherwise, waive any right to oppose any action taken against it by the Government under FAR Subpart 9.4 or Appropriations Act Section 8125, or any other substantive, procedural, or due process rights that may be available under the Constitution or other applicable laws or regulations of the United States. Moreover, nothing in this Agreement shall be interpreted to compel or effect a waiver of the attorney-client privilege, attorney work product protection, or any other applicable privilege or protection that may be available to Contractor in connection with Contractor's obligations under the Agreement or in any other respect. UTC agrees that it will make any claims of privilege and, where necessary, negotiate any disputes as to claims of privilege in good faith.

19. **Press Releases.** UTC and the Army agree that neither party will issue a press release related to this Agreement.

20. **Governing Law.** This Agreement shall be governed by the laws of the United States with regard to all matters arising hereunder.

21. **Agreement.** This Agreement constitutes the entire agreement between the Army and UTC, and supersedes all prior agreements or understandings, oral or written, with respect to the subject matter of this action.

**E. ADMINISTRATION OF AGREEMENT**

1. **Addresses for Agreement Correspondence.** All submissions required by this Agreement shall be delivered to the following addresses, or such other addresses as the parties may designate in writing.

If to the Army:

Procurement Fraud Branch  
Contract and Fiscal Law Division  
U.S. Army Legal Services Agency  
ATTN: JALS-KFLD-PFB (Angelines McCaffrey)  
9275 Gunston Road - Suite 2100  
Fort Belvoir Virginia 22060-5546

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If to UTC:

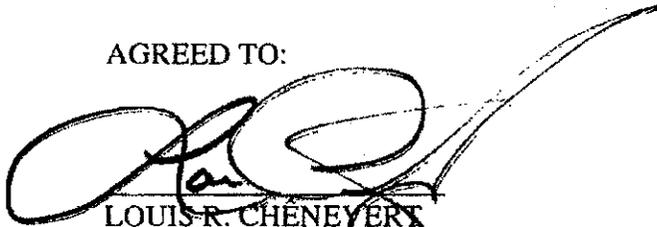
Vice President, Global Compliance  
United Technologies Corporation  
United Technologies Building  
Mail Stop: 524  
Hartford, CT 06101

2. **Administrative Costs.** Within ten days of the Effective Date of this Agreement, UTC shall deliver a check in the amount of \$25,000.00 to the Army, payable to Treasurer of the United States, in order to compensate the Army for the cost of negotiating and administering this Agreement, to include costs associated with Army visits to UTC and any of its divisions or its subsidiaries authorized under this Agreement.

3. **Authorized Representatives.** By their signatures below, each of the undersigned individuals executing this Agreement on behalf of a party or parties to this Agreement represents and warrants that he is duly authorized to bind the party or parties on whose behalf he has executed this Agreement.

4. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and, when taken together with the other signed counterpart, shall constitute one agreement that shall be binding and effective as to all parties on whose behalf signatures have been affixed to this Agreement. Facsimile or .pdf signatures will constitute valid evidence of execution. This Agreement shall be effective as of the Effective Date, even though no single counterpart is executed by all signatories to this Agreement.

AGREED TO:



LOUIS R. CHENEY  
CHAIRMAN & CHIEF EXECUTIVE  
OFFICER  
UNITED TECHNOLOGIES  
CORPORATION



ULDRIC L. FIORE, JR.  
SUSPENSION AND DEBARMENT  
OFFICIAL  
U.S. DEPARTMENT OF THE ARMY

12-20-12  
DATE

20 December 2012  
DATE