

# **Griffon**CORPORATION

## ***CODE OF BUSINESS ETHICS***

*This document is not a contract or a modification to an existing contract.*

To All Griffon Employees:

The Company is committed to maintaining the highest standards of conduct. Ethical behavior is morally right and legally required, and requires your personal commitment, the same kind of commitment that we believe you and your fellow employees expect for themselves and the Company from others.

The Code of Business Ethics cannot address every situation an employee may encounter, nor is it a strict list of do's and don'ts. Rather, it is a basis for you to make sound moral and ethical judgments in business dealings. Other company policies, practices and procedures, as well as sound common sense, also apply.

The company will schedule periodic training sessions on matters related to this Code. At the conclusion of these sessions, you will be given a statement to sign confirming your review of the Code and your attendance at the training sessions. A copy of this acknowledgment will be placed in your personnel file.

As a company, we are committed to this Code, and we will not tolerate actions or conduct that violate it. Accordingly, we urge you to report suspected violations of the Code of Business Ethics using the "HOTLINE" reporting process or through any of the other channels available for you to make such report.

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Harvey R. Blau  
Chairman of the Board

## **CODE OF BUSINESS ETHICS**

This is the Griffon Corporation Code of Business Ethics. The Code is supplemented in several areas by specific Policies. While few of us may remember all the details of all these Policies, every employee should understand and remember the concepts described in this Code and be able to find and use the more detailed Policies when necessary.

- **Integrity.** *All employees are expected to conduct themselves with the highest principles of honesty and integrity.* Each of us must avoid not only impropriety, but the appearance of impropriety as well.
- **Law Abiding and Ethical.** *The Company is law-abiding and ethical.* No employee shall take, recommend, or direct any action which the employee believes may violate any law, regulation, Company policy or this Code. All employees have a duty to report to the Company or the appropriate authorities any known or suspected violations of law, regulations or Company policy, including violations of this Code of Business Ethics.
- **Stewardship of Company Funds and Assets.** *Employees are expected to be careful stewards of the Company's assets and funds.* No employee may recommend, make or approve any expenditure of funds or use of Company assets in violation of any law, regulation, Company policy, or for any personal or other non-business purpose, or outside of the employee's scope of authority.
- **Books and Records.** *Accurate and complete books and records are necessary for the Company to do business.* Employees shall comply with the Company's established accounting rules and controls. All of the Company's books, records, accounts and financial statements must accurately reflect the nature of the transactions recorded and must conform both to applicable legal and accounting requirements and to the Company's system of internal controls. All assets and liabilities of the Company must be recorded in the regular books of account. No undisclosed or unrecorded fund or asset shall be established in any amount for any purpose. No false or artificial entries shall be made for any purpose. No payment shall be made, or purchase price agreed to, with the intention or understanding that any part of such payment is to be used for any purpose other than that described in the document supporting the payment. Employees shall not knowingly charge unallowable costs and expenses to the Company, nor conceal or misrepresent expense reports. All labor and material costs shall be accurately reported, recorded and charged. Erroneous charges shall be corrected immediately.
- **Quality and Safety.** *The Company is committed to providing products and services which are safe and which meet or exceed customer expectations of quality and value.* Deficiencies in product quality, safety, design or installation may place the well being of customers, employees or others at risk as well as threaten the financial stability of the Company, and must be reported promptly.
- **Dealing with People.** *It is a fundamental principle of this Company that all people should be treated with respect and courtesy.* This expectation applies not just to co-workers, but also to customers, vendors and all other persons employees deal with in the

course of their work. Examples of behaviors which violate this fundamental value include physical or verbal abuse, profanity, vulgarity, name-calling or threats, shouting, intolerance or stereotyping as to race, religion, political beliefs, national origin or gender, unwelcome sexual advances or promoting an environment of sexual intimidation or harassment, insensitivity to the individual beliefs and customs of others, rudeness or malicious gossiping.

- **Employment Diversity.** *The Company is committed to providing equal employment opportunity and promoting workplace diversity.* As an equal opportunity employer, the Company will not tolerate discrimination against any employee based on race, color, gender, age, religion, national origin, disability or any other legally protected characteristic. Employment and personnel decisions will be made in a manner which promotes the principle of equal employment and achieves affirmative action goals. The Company's policies on Equal Employment Opportunity, Non-Discrimination, Affirmative Action, and Sexual Harassment are incorporated herein by reference.
- **Employee Safety; Drugs and Alcohol.** *The Company is committed to maintaining a safe and drug-free workplace.* All employees are expected to know and comply with appropriate facility safety rules. Deficiencies in workplace safety should be reported promptly to management. The use, possession or distribution by any employee of any illegal drug, illegally used prescription, controlled substance or alcoholic beverage on Company premises, or anywhere else in a manner which may harm the safety of any employee, the quality or efficiency of Company work or the general reputation of the Company, violates this Code, and may violate applicable law.
- **Environmental Protection.** *The Company is committed to being a good corporate neighbor.* The Company maintains production and waste management practices that meet applicable environmental legal requirements as well as meeting our business requirements. Employees are expected to understand and follow the environmental compliance requirements applicable to their particular facilities. Violation of those rules is a breach of this Code and may violate applicable law.
- **Conflicts of Interest.** *Employees are expected to keep the best interests of the Company foremost in the performance of their duties, and not allow themselves to be placed in any position of actual or apparent conflicts of interest with the Company.* Conflicts of interest may improperly influence or give the appearance of improperly influencing sound business decisions, and may violate the law. It is never acceptable to offer, solicit, give or receive any kind of bribe, kickback or other illegal or unethical payment. Beyond such obviously improper behavior, it also is a violation of this Code for any employee to engage directly or indirectly in outside business activities with a customer, supplier or agent of the Company, or that are competitive or inconsistent with any business of the Company. A conflict of interest also arises if an employee seeks or accepts gratuities, favors or other benefits having more than nominal value from a supplier or customer or someone who works for a supplier or customer, or for an employee to offer to give any gratuity, favor or benefit having more than nominal value to a supplier or customer. In addition to possibly being a violation of the law, conflicts of interest are banned because they may be interpreted as improperly influencing sound business decisions. A conflict of interest does not arise where a gratuity, favor or other benefit is received or granted as

part of a sales promotion or other program generally available to customers of the supplier or customer of the Company, and approved by senior management. For the same reasons of potential conflict of interest, where a personal relationship exists between an employee and an industry representative or government employee or official of some agency or any customer or supplier with whom the Company has or is considering a business transaction, the employee must report the relationship to senior management promptly, before the transaction is negotiated.

- **Protecting Company Information.** *Company information is an important Company asset and must be kept in confidence.* It is critical to the Company's competitive position and commercial success that the Company's proprietary and confidential information not be improperly used or disclosed by any employee. Customer lists, price lists, strategic plans, manufacturing processes and practices, employee rosters or other employee information and all other sensitive information must be kept confidential. Employees should not discuss Company proprietary information with other Company employees unless the other employees need to know that information in order to perform their jobs. Employees must not use or disclose any confidential information learned in the performance of their Company duties for their own private profit or gain or that of any other person, or for any other purpose outside the scope of the proper performance of their duties. For example, this general rule, as well as federal law, is violated if an employee uses or discloses non-public Company information in order to trade in or suggest selling or buying Griffon Corporation stock, as further detailed in the Company's Policy on Insider Trading. Trade secrets which are developed using Company time, resources or materials, including inventions and other ideas, belong to the Company, and any employee involved in creating these must cooperate in the Company's documentation of ownership of such intellectual property. Nothing in this Code, however, shall be construed to prohibit employees from discussing with others the terms and conditions of their own employment.
- **Political and Governmental Activity.** *All activities with government agencies must be conducted strictly on an arm's length business basis.* Both the US and many other countries have complex and detailed regulations that address doing business with government branches or agencies. In general, in business dealings with government entities, no employee shall provide or offer to provide any gratuity, favor or other benefit to governmental agents, or engage in any other activity which could improperly influence, or reasonably be interpreted as attempting to improperly influence, any government decisions or activities. Payment of Company funds or contributions made in the Company's name for political action committees or for other political purposes violates this Code and the Policy governing use of Company funds. ***All employees who have business dealings with branches or agencies of the U.S. or any foreign governments must read, understand, and comply with the Addendum to this Code of Ethics.***
- **Electronic Resources.** *The Company's systems which provide access to the Internet and for email and electronic commerce, as well as electronic facsimile transmittal ("fax") and traditional phone systems, are intended only for the conduct of Company business, and all information on these systems is the property of the Company and not that of any individual.* Employees are expected to know and comply with the Company's rules

governing the use of such systems and to understand that such systems are intended only for the conduct of legitimate Company business. All data on such systems is subject to Company disclosure and inspection. Use of any of these systems by an employee to harass or offend others, or to access Internet or other resources for pornography or other offensive materials, may violate the law and specific Company policies on this subject and violates this Code.

- **Competition.** *It is a violation of this Code and may be illegal for any employee to plan or act with any competitor to fix prices, restrict market competition or otherwise violate the antitrust and trade regulation laws.* The Company has prospered under our country's open competitive environment, and expects employees to comply with antitrust and trade regulation rules which apply to their activities.
- **International Business.** *The conduct of international business is subject to specific restrictive U.S. and foreign laws and rules.* Any employee proposing to make, market or sell the Company's goods or services in any foreign country is responsible for consulting in advance with senior management and the Company's attorneys in order to assure compliance with domestic and foreign laws, rules and regulations.
- **Responsibility.** *Compliance with this Code of Ethics and the Company's policies is a condition of employment with the Company.* Every employee of the Company is expected to carry out his or her work in compliance with these standards. Each Company manager and supervisor has an obligation to assure that every employee reporting to them has received a copy of this Code and of the Company Policies relevant to the positions involved, and is made aware of the requirements of this Code and those Policies. Anyone with questions or concerns about these standards should promptly raise those questions and concerns with his or her supervisor and/or the Ethics Liaison Officer.
- **Enforcement.** *Anyone who suspects in good faith that this Code or a Company Policy has been violated has an obligation to report suspected violations to the Ethics Liaison Officer or to Griffon Corporation's Ethics Officer.* It is a breach of this Code for any manager or employee of the Company to retaliate or attempt to retaliate against any employee submitting such a report. The Company takes allegations of violation seriously and will investigate them. Violators will be disciplined. Investigations will be directed by the Ethics Officer of Griffon Corporation or a representative of the applicable operating company, at the direction of the Ethics Officer of Griffon Corporation.

## **REPORTING & RESPONSIBILITIES**

### **A. THE GRIFFON "ETHICS OVERSIGHT COMMITTEE"**

To promote and maintain a corporate environment which encourages the disclosure of concerns or reports of violations of procurement laws and regulations and the corporate Code of Business Ethics and Standards of Conduct, the Company maintains the following system:

- The Griffon Board has established a permanent three-member Ethics Oversight Committee ("EOC") consisting of three outside directors;
- The EOC appoints one of the outside directors as its chairperson ("Chair"), and the Chair has full Board and corporate authority to investigate and act upon information submitted by any employee to the Company, the Griffon Board, the EOC, or directly to the Chair;
- The EOC also has the responsibility for reviewing and monitoring the activities of the Ethics Officer; and
- The Chair also is responsible for establishing and maintaining the EOC's operating procedures, including its own separate and independent "HOTLINE" procedure for the receipt, investigating and reporting of information and reports of violations, or suspected violations, of the Code of Business Ethics and Standards of Conduct. Employees choosing to use the HOTLINE may leave their name or report suspected violations anonymously.

### **B. ETHICS OFFICER**

Patrick Alesia, Griffon Corporation's Vice President, Treasurer and Secretary, has been designated the Corporate Ethics Officer ("Ethics Officer") for Griffon and all of its subsidiaries.

The Ethics Officer is responsible for the implementation of all matters relating to the Code of Ethics, including establishing operating procedures, developing educational programs and materials for inclusion in the Company's ethics training program, dissemination of the Code (including via electronic means), maintaining the Company's "HOTLINE", maintaining liaison with the EOC, and investigating and reporting of information and reports of suspected or known violations of the Code of Business Ethics and Standards of Conduct. The Ethics Officer may seek legal advice and investigative assistance from in-house counsel or outside counsel, as appropriate.

#### **1. Ethics Liaison Officers**

Each of the operating companies of Griffon Corporation shall designate an Ethics Liaison Officer. The Ethics Liaison Officer shall assist the Ethics Officer in all of his or her duties. The Ethics Officer may delegate such duties and responsibilities to the Ethics Liaison Officer as the Ethics Officer may deem appropriate and necessary.

**2. Reports**

The Ethics Liaison Officer shall provide annual written reports to the Ethics Officer and the EOC of the Griffon Board describing the activities associated with these responsibilities, including implementation of the Company's Ethics Program.

The Ethics Liaison Officer's written reports will include information concerning (i) complaints, (ii) areas of investigation, (iii) status and disposition of investigations, including disciplinary actions taken, (iv) educational and training programs conducted on matters related to the Company's Code of Business Ethics and Standards of Conduct during the reporting period, and (v) educational and training programs planned for the next reporting period.

**3. Reporting:** Suspected instances of improper conduct may be reported to:

**ETHICS OFFICER**

Name: Patrick Alesia, Vice President, Treasurer and Secretary  
Griffon Corporation  
Telephone: 516-938-5544 (ext. 221)

**CLOPAY ETHICS LIAISON OFFICER**

Name: David E. Troller, Vice President, Chief Legal Officer, and Secretary  
Clipay Corporation  
Telephone: 513-770-3935

**TELEPHONICS ETHICS LIAISON OFFICER**

Name: Gerald Raymon  
General Counsel  
Telephonics Corporation  
Telephone: 631-755-7759

**ETHICS OVERSIGHT COMMITTEE (HOTLINE)**

Telephone: 516-938-1103

- For matters related to U.S. Government contracts:

**DOD HOTLINE**

DOD Inspector General Attn: Defense HOTLINE  
Address: 400 Army Navy Drive  
Washington, DC 22202-6884  
Telephone: (800) 424-9098

### **Training:**

The Ethics Liaison Officer has responsibility for providing employee training on all matters related to the Company's Code of Business Ethics and Standards of Conduct. The Company will schedule periodic training sessions at all major locations to explain and discuss this Code and the related Policies. Questions not clearly answered by this Code or the Company's Policies or at an available training session should be discussed with the appropriate supervisor, or they may be reviewed with a Human Resources representative or the appropriate Ethics Liaison Officer.

This Code supersedes all ethics policies previously issued by Griffon Corporation or its subsidiaries.

### **SUMMARY**

The Company's reputation and its actions as a legal entity depend on the conduct of its employees. Each employee must commit to act according to the highest ethical standards and to know and abide by applicable laws. We each must assure that our personal conduct is above reproach and complies with the highest standards of conduct and business ethics. Difficult as it may be at times, we also each have an obligation to assure that the conduct of those who work around us complies with these Standards. The Company's Code of Business Ethics will be enforced at all levels fairly and without prejudice.

Any employee with a question about these Code of Business Ethics and their scope and interpretation in any circumstances, whether involving them or someone else, has an obligation to ask for clarification or help. Prompt and open discussion of questions and issues will help assure that the Company can achieve its planned business growth, to the advantage of all present and future employees who will share both in the responsibility for that growth and its rewards.

**GRIFFON CORPORATION**

**EMPLOYEE ACKNOWLEDGMENT**

I HEREBY ACKNOWLEDGE THAT I HAVE READ AND I UNDERSTAND THE GRIFFON CORPORATION **CODE OF BUSINESS ETHICS**.

I AGREE TO CONDUCT MYSELF IN A MANNER CONSISTENT WITH THE POLICIES AND PRACTICES SET FORTH IN THIS CODE.

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(Name, Please Print)

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(Employee ID)

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(Social Security No.)

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(Division)

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(Department)

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(Signature)

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(Date Signed)

**A copy of this Acknowledgment will be maintained in your personnel file.**

*This is not a contract or a modification to an existing contract.*

## **Addendum to the Code of Business Ethics**

### **DEALING WITH THE GOVERNMENT**

#### **Introduction**

This corporate policy establishes standards of conduct and behavior for all employees of the Company. Further, it provides guidance to employees in interpreting and complying with standards of conduct and related corporate policies. With worldwide business activities and a diverse customer base -- ranging from the United States Government and foreign governments to large commercial accounts -- it is extremely important that sales and marketing personnel in the Griffon Corporation family of businesses, including this Company, be aware that practices acceptable in the private business world are not necessarily permitted when dealing with government entities, and that special and complex regulations apply to many facets of government-related transactions. Accordingly, the standards for conducting business associated with U.S. and foreign governmental ("government") agencies will be considered separately.

#### **1. Government Customers**

Given the multitude and variety of government procurement laws and regulations throughout the world, the Company has adopted principles responsive of the policies, standards, regulations and laws applicable to contracting with the U.S. Government. These principles and guidelines apply where a government is a direct customer of the Company or an indirect customer where the Company sells through a prime contractor and, in turn, the Company is subject to "flow-down" provisions or U.S. Government rules and regulations otherwise apply. While other foreign governments may have specific code of conduct requirements, the high standards applicable to contracting with the U.S. Government will ensure our compliance with codes of conduct established by other governmental activities.

##### **• Gratuities**

The U.S. Government's Federal Acquisition Regulation ("FAR") prohibits the giving or offering of a gratuity to obtain a contract or favorable treatment under a contract. It defines "gratuity" as any entertainment or gift without regard to its value. (FAR Subpart 3.2, "Contractor Gratuities To Government Personnel.") Further, the offer or acceptance of a gratuity is a felony, and if any contract is associated with the gratuity, it may be terminated and the contractor assessed exemplary damages of not less than three nor more than ten times the cost of the gratuity.

To ensure strict compliance with governmental regulations, the Company has adopted the Department of Defense's definition of a "gratuity."

Any gift, favor, entertainment, hospitality, transportation, loan, forbearance, any other tangible item, and any intangible benefits, including discounts, passes, and promotional vendor training, given or extended to or on behalf of a Company employee, the employee's immediate family or a household member, for which

market value is not paid by the recipient. It does **not** include such items as (i) modest items of food and refreshments, such as soft drinks, coffee and donuts, offered other than as part of a meal; and (ii) items with little intrinsic value, such as plaques, certificates, and trophies, which are intended solely for presentation. (“Market value” means the retail cost the recipient would incur to purchase the item.)

See Department of Defense (“DoD”) Directive 5500.7, “Standards of Conduct”; Title 5, Code of Federal Regulation (“CFR”) §2635.

In keeping with the strict prohibition against providing a gratuity to any government personnel, there are certain limited exceptions for government employees engaged in contracting activities, such as:

- Acceptance of unsolicited advertising or promotional items that are less than \$20.00 in retail value, not to exceed \$50.00 in any one year period; and
- Modest items of food and refreshments of nominal value offered as a normal courtesy.

Accordingly, the Company prohibits any employee from providing, or offering to provide, to any government personnel a gratuity of any value, except to the extent the gratuity falls within the narrow confines of the two exceptions above. In connection with this prohibition, the Company will not reimburse an employee for any business expenses found to be a gratuity to government personnel.

In discussing the prohibition against gratuities, a typical comment is: "What difference does it make if I purchase the government employee's lunch, or I buy a drink -- that is not much of a bribe!" It must be remembered that Company employees are prohibited from providing such gratuities not only because it violates Federal procurement regulations (and may violate the laws of a host country), but also because such gratuities give the appearance of impropriety or favoritism. Remember, no matter how innocent the gratuity may be, it immediately brings into question the integrity and business ethics of the employee and the Company.

- **Bribery and Kickbacks**

Closely akin to gratuities, bribery is the exchange of something of value (e.g., money, goods, services, etc.) for improper action on the part of the U.S. Government employee, and it is a Federal offense. 18 U.S.C. §§ 201-209.

Related to bribery activity are the schemes between the prime contractor and its subcontractor, where payments are "kicked back" to the prime to obtain contracts, a competitor's bid or technical data or other information which would enable the subcontractor to obtain an unfair competitive advantage. Such activities involving a negotiated U. S. Government contract are prohibited by the Anti-Kickback Act, 41 U.S.C. 51-54. Most countries where the Company does business have comparable local laws prohibiting bribery and kickbacks to government officials and employees.

The Company prohibits any employee from participating in any bribery or kickback scheme, whether in the offering or receiving of payments for beneficial or favorable actions in any business matter.

- **Foreign Corrupt Practices Act**

The Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-2, prohibits the payment of any money or anything of value to a foreign official, foreign political party (or official thereof), or any candidate for foreign political office for purposes of obtaining, retaining, or directing of business to the Company, directly or indirectly, such as through a sales representative or consultant. As a Company and as employees, we must strictly abide by this law. Any violation or any solicitation to violate must be reported immediately. The law does not excuse deliberate ignorance or conscious disregard of the facts, and any suspect or suspicious circumstance should be reported to the Ethics Officer.

There are many other laws regulating business dealings with foreign customers and foreign governments. In order to meet our obligations under these laws, employees who work with international vendors, customers, sales representatives or consultants must be aware of these laws and strictly comply with all laws which apply to countries where we do business. Any violations or any solicitations to violate must be reported immediately to the Ethics Officer.

- **Export Control Rules – Export of Goods, or Disclosures of Technology and Technical Data**

Many of the Company's products, technologies or services require a U.S. Government license or approval before they can be exported; that is, shipped, transmitted, or provided out of the United States or transferred to a foreign national in the United States. Even in those instances when a product may be "commercial," the Export Administration Regulations are still applicable and must be adhered to.

The following actions constitute an "export" under U.S. State Department and Department of Commerce regulations:

- Sending or taking of a “defense article” out of the United States in any manner.
- Disclosing or transmitting (e.g., in person, by telephone, correspondence, electronic means, etc.) technical data by U.S. persons<sup>1</sup> to foreign persons.<sup>2</sup>
- Performing a “defense service” on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad.
- A transfer to any person of items or “technical data” within the United States, with the knowledge or intent that the items or technical data will be shipped, transferred, or transmitted outside the United States or to a foreign person.
- Transmitting, delivering or sending “technical data” by any means including electronic transmission (E-mail) to a foreign person, whether in the United States or abroad.

Before any equipment, service, technology or technical data can be exported to a foreign country, or disclosed to a foreign country or person, a determination must be made as to whether an export license is required. The requirement for and issuance of the export license is governed by one, or both, of the following agencies: (1) for **military** goods, technology and technical data, the Directorate Of Defense Trade Controls (“DDTC”), Department of State; and (2) for **commercial** or **dual-use** (i.e., military and commercial) goods, technology or technical data, the Bureau of Industry and Security (“BIS”), Department of Commerce.

- DDTC’s regulations are contained in the International Traffic In Arms Regulations (“ITAR”), and includes the U.S. Munitions Control List. See 22 CFR Parts 120-130.
- The BIS administered regulations are the Export Administration Regulation (“EAR”). See 15 CFR Part 700, “Bureau of Export Administration.”
- ***Defense Articles or Services.*** When applying for an export license for the export of defense articles or services (as defined in ITAR) valued in an amount of \$500,000 or more which are to be sold commercially to or for the use of the armed forces of a foreign country or international organization, the ITAR requires the supplier or vendor to certify as to the payment of political

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<sup>1</sup> *U.S. person* is defined in Section 120.15 of ITAR and “means a person (as defined in section 120.14 of this part) who is a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity. It does not include any foreign person as defined in section 120.16 of this part.”

<sup>2</sup> *Foreign person* is defined in Section 120.16 of ITAR and “means any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions).”

contributions, fees or commissions to the Office of Defense Trade Controls. See ITAR § 130.5; 22 CFR Part 130, “Political Contributions, Fees and Commissions.”

- Knowledge of a promise, offer or payment of any political contribution, fee or commission, whether in cash or otherwise, other than those officially approved, should be reported to the Office of the Ethics Liaison Officer.
- ***Commercial or Dual-Use Items.*** In the case of commercial or dual-use items (i.e., items having both commercial and military), the licensing determination is made by the Department of State. However, a relatively small percentage of commercial exports and re-exports subject to the EAR require an application to BIS for a license. Many items are not on the Commodity Control List (CCL) (Supplement No. 1 to § 774.1 of the EAR), or, if on the CCL, require a license only for a limited number of countries or uses. However, other rules and documentation requirements apply to the shipment of a commercial item, such as to prohibited countries or parties, and there may be other reporting requirements. Therefore, all exports must be conducted in coordination with the Legal and Shipping Departments and in accordance with internal SOPs and Directives dealing with same.
  - 15 CFR Parts 730-774 contain the Commerce Department’s export regulations, in which embargoed countries are identified, as well as the restrictions applicable to certain end uses, such as nuclear, missile, chemical and biological weapons. The Export Administration Regulations contain ten (10) General Prohibitions at 15 CFR 732.1(d)(1) which should be used as a checklist and observed when making an export of a commercial product. Employees responsible for an export should confirm that a party to the export transaction is not on any restricted or debarred list by referring to the “entity list” found in the Export Administration Regulations at 15 CFR 744.1(c), other published Government debarment lists, and obtain current confirmation of their eligibility status through the Company’s Legal or Shipping Department.
  - The U.S. Treasury Department Foreign Assets Control Regulations, administered by the Office of Foreign Asset Control (OFAC), apply to banking and financial transactions in or with certain prohibited countries (e.g., currently Cuba, Iraq, Iran, Libya, etc.) or identified companies or persons. Financial transactions in or with such countries or persons should be first reviewed with Counsel.

Questions concerning the necessity for a license, applicability of the ITAR or EAR to the Company’s planned exports, re-exports or transfers of goods, services, technology or technical data are to be referred to the Company’s General Counsel. Failure to follow the applicable Regulations, obtain a license or follow its provisions can result in serious consequences to the Company, including fines, penalties and loss of all export privileges.<sup>3</sup> As in all government statements, it is important to be truthful, accurate and complete.

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<sup>3</sup> Under 22 U.S. C. § 2778, the penalty for unlawful export of items or information controlled under the ITAR is up to 2 years imprisonment, or a fine of \$100,000, or both. Under 50 U.S.C., Appendix 2410, the penalty for unlawful export of items or information controlled under the EAR is a fine of up to \$1,000,000, or five times the value of the exports, whichever is greater; or for an individual, imprisonment of up to 10 years, or a fine of up to \$250,000, or both.

- **Contingent Fees**

A **contingent fee** is any commission, percentage, brokerage, or other payment that is contingent upon the success that a person or concern has in securing a contract. See FAR Subpart 3.4, "Contingent Fees."

**a. U.S. Government.**

An arrangement to pay a contingent fee for soliciting or obtaining U.S. Government contracts is prohibited by Federal law. 10 U.S.C. 2306(b) and 41 U.S.C. 254(a). But within this general prohibition, the U.S. law does permit **bona fide employees** of the Company or **bona fide selling agencies regularly retained by the Company** to receive contingent fees or bonuses based on U.S. Government business so long as neither "exerts or proposes to exert improper influence to solicit or obtain U.S. Government contracts nor holds itself out as being able to obtain any U.S. Government contract or contracts through improper influence." FAR Subpart 3.4., "Contingent Fees" Commissions, bonuses or other incentives for maintaining or increasing sales to the U.S. Government are lawful and are not the subject matter of this subsection.

A selling agency is considered to be "bona fide" if it meets certain criteria:

- The sales commission or fee cannot be inequitable or exorbitant when compared to customary commissions or fees for commercial transactions.
- The sales representative or agent must be knowledgeable and conversant with Company products and systems.
- The Company and the sales agent must have an existing current active relationship, or it is a new relationship whose terms clearly contemplates a continuing relationship in the future.
- The agent or sales representative has a demonstrated history of conducting such activities as part of its regular business, preferably in the representation of companies in both government and commercial transactions.

The Company maintains strict rules and procedures with respect to the payment of contingent fees. Any knowledge of fees that have not been properly documented or are outside the normal procedures should be reported to the Ethics Officer immediately.

**b. Sales to Foreign Governments.**

The Company sells its products and systems to both military and civilian agencies of foreign governments, either as the prime contractor to the government agency or as a supplier or

subcontractor to a prime. In the case of sales of military equipment to defense agencies of foreign governments, the acquisitions may typically involve some form of participation by the U.S. Government, either under its Foreign Military Sales ("FMS") Program or through its Foreign Military Financing ("FMF") Program. Under either Program, there are strict restrictions and limitations on the payment of fees and commissions.

- **FMS:** The policies and procedures applicable to acquisitions for FMS are stated at Subpart 225.73, *Acquisitions For Foreign Military Sales*, of the Department of Defense FAR Supplement ("DFARS"). An FMS sale is an acquisition by the U.S. Government of U.S.-origin equipment for a foreign government. In such transactions, refer to DFARS 225.7303-4, Officer and Acceptance (DD Form 1513) to the customer." Contingent fees, and DoD 5105.38 M, Security Assistance Management Manual ("SAMM") currently provide:
- The governments of Australia, Taiwan, Egypt, Greece, Israel, Japan, Jordan, Republic of Korea, Kuwait, Pakistan, Philippines, Saudi Arabia, Turkey, Thailand, and Venezuela (Air Force) prohibit reimbursement of all contingent fees as an allowable cost under FMS contract, **unless** the payments have been identified and approved in writing by the government's authorized representative before contract award.
- For countries not listed above, contingent fees exceeding \$50,000 per FMS contract shall be an unallowable cost under DoD contracts, **unless** payment has been identified and approved in writing by the government's authorized representative before contract award.
- Contingent fees are to be fair and reasonable, and they are only to be paid to a bona fide employee or a bona fide established commercial or selling agency retained by the Company for the purpose of securing business. See FAR 31.205-38(c); FAR 3.401; Paragraph 80103, *Sales Commissions and Agents Fees*, "Security Assistance Management Manual," DoD 5105.38-M.
- **FMF:** The policies and procedures applicable to the FMF funding of acquisitions of military equipment and systems by foreign governments are stated in DoD's "Security Assistance Management Manual." DoD 5105.38-M and the "Guidelines For Foreign Military Financing Of Direct Commercial Contracts" (January 2005) of the Defense Security Cooperation Agency, which administers FMF programs.
- An FMF-funded sale is an acquisition by a foreign government ("direct sale") of U.S.-origin equipment, with U.S. funds representing a portion or all of the acquisition cost. The goods and services purchased with FMF funds must be manufactured and assembled in the U.S., purchased from U.S. firms, and composed of U.S.-origin components and services. Any exception to this requirement is to be pre-approved by the U.S. Government. Paragraph 5, "Guidelines For Foreign Military Financing Of Direct Commercial Contracts". May 2000, Defense Security Cooperation Agency. When FMF funding is part of a direct sale to a foreign government, commissions or contingent fees may not be included in the purchase price under law or the Company

policy. As with FMS sales, if any fees are lawfully due to a representative, they are not to be included in the contract price but may be paid, with appropriate approvals as an unallowable cost from separate, approved accounts. **No element of commissions or contingent fees are to be included in a contract funded by the U.S.**

**Government. When commissions or contingent fees related to the sale will be paid with other than U.S. FMF funding (e.g., from the foreign government's share of the sales price) the company is required to fully disclose the arrangement at the time the contract is presented for approval or if the sale is through a third party, the third party should be advised.**

#### • Foreign Government Restrictions

Independent of the FMS and FMF limitations and restrictions, the acquiring foreign government may itself have limitations or restrictions on the payment of commissions and contingent fees. In this regard, no employee shall engage in any form of political activity in, or with respect to, a foreign country without first notifying the Ethics Officer (see Part III below) and obtaining counsel on the legal and ethical guidelines associated with such activity.

#### • Pre-Approval of Sales Agreements for Government-Related Activities

While commission or selling agreements with outside individuals or companies for government-related activities (U.S. or foreign) may be permissible under certain circumstances, all commission, selling or other contingent fee arrangements (including all modifications and/or extensions) with any person or entity not employed by the Company must be reviewed and approved **in advance** by the Ethics Officer. **Any arrangement not approved by the Ethics Officer will not be recognized as a valid agreement and no payments will be made under its terms.** Individuals or firms that are suspended, debarred or otherwise determined by the U.S. Government to be ineligible to obtain government contracts will not be retained as representatives or representatives or consultants. No service may be performed, authorized, accepted or paid for unless and until the representative or consultant is under a duly approved agreement or contract.

#### • Improper Contract Bidding and Negotiation Practices

Collusive bidding, sharing business among competitors, price fixing and bid rigging are terms commonly used to describe anti-competitive activities which would violate Federal laws and regulations. FAR Subpart 3.3., "Reports of Suspected Antitrust Violations," 15 U.S.C. 1, and 18 U.S.C. 271. Common schemes involve agreements or understandings among competitors to restrict or limit competition by predetermining which companies would bid, what prices would be bid and who would be the successful bidder.

Under FAR Clause 52.203-2, "Certification of Independent Price Determination," an offeror is required to certify that it has not engaged in antitrust activities in arriving at an offer or bid. To comply with the requirement for independent price determination in the submission of bids and proposals (either as a prime contractor or a supplier/subcontractor) related to all government acquisitions, the following rules are established:

- The Company's prices shall be arrived at independently, without, for purposes of restricting competition, any consultation, communication or agreement with any other offeror or competitor relating to (i) those prices, (ii) the intention to submit an offeror or bid, or (iii) the methods or factors used to calculate the prices offered;
- Prices offered by the Company will not be knowingly disclosed, either directly or indirectly, to any other offeror or competitor before bid opening (in the case of a sealed bid solicitation) or contract award (in the case of negotiated solicitation);
- No employee will attempt to induce any competitor or other entity to discuss, exchange or share bidding information;
- No employee will attempt to induce any competitor or other entity to bid or not to bid on a solicitation for the purpose of restricting competition;
- No employee will attempt to induce any official to divulge information not given to others which gives an improper competitive advantage to the Company; and
- No employee will attempt to induce any official to release or divulge procurement information (e.g., competition prices in price proposals, aspects of technical proposals, identity or rank of competing proposals, proprietary/confidential data or trade secrets, government price estimates or the "price to beat").

In the submission of pricing proposals or contract modifications for a price adjustment, Company employees shall adhere to the following rules:

- No employee will submit cost or pricing data to the government or a third party which is not current, accurate and complete as of the time of the submission;
- No employee shall provide commercial marketing information and data to the government or a third party (if requested) that is not current, accurate and complete as of the document submission date;
- No employee shall falsify, alter or distort information submitted to the government or a third party; and
- No employee will purposely delay the submission or disclosure of data so as to provide an improper advantage to the Company.

## 2. Internal Investigations and Reviews

The Ethics Officer has responsibility for conducting investigations in areas of potential fraud and abuse in such areas as violation of the Procurement Integrity Act, defective pricing, cost mischarging, improper gratuities, conflicts of interest, and commissions and contingent fee arrangements.

## 3. Commissions and Contingent Fee Arrangements for Government-Related Activities

Because of the special rules which apply to contracting with U.S. and foreign governments, the Ethics Officer is responsible for the review, approval and monitoring of all agreements with outside consultants, agents and sales representatives (collectively referred to as "Agents") for government-related activities (both U.S. and foreign). **Any such arrangement not approved by the Ethics Officer will not be recognized as a valid agreement and no payments will be made absent an approved agreement.**

The Ethics Officer also is responsible for reviewing the Company's policies and procedures for retaining any Agent who is to be used to obtain business for the Company or otherwise interface with the Company's government-related customers. In this regard, it is the policy of the Company that it will retain only Agents who are (i) regularly engaged in the business of contract representation in the country in question, (ii) experienced in being sales representatives of companies for the same nature as that contemplated by the Company, and (iii) familiar with, and knowledgeable of, the type of products the Company is asking be promoted in the country. Moreover, the Company will not retain any Agent that is suspended, debarred or otherwise has been determined by the U.S. Government or a foreign government to be ineligible to obtain a government contract.

Among other things, the Ethics Officer will ensure that: (i) the need for and nature of the services is clearly documented, (ii) the proposed agreement has been reviewed and authorized by the President of the Company, (iii) the agreement's statement of work, term or duration, and fee arrangement are well defined, (iv) the fee arrangement does not violate applicable laws, regulations or local customs, (v) the contract file contains a report of the Agent's prior activities on behalf of the Company, if any, (vi) an officer of the Company has been assigned to monitor the efforts of the Agent and will verify that work is being performed in accordance with the terms of the agreement, (vii) the Agent is not suspended, debarred or otherwise ineligible to receive contracts from the U.S. Government, and (viii) the terms of the Agent's agreement specify that the Agent is to adhere to the Company's Code of Business Ethics and Standards of Conduct, and that the Agent will sign a certificate stating that the Agent has read, understands and will abide by the Company's Code of Business Ethics and Standards of Conduct.

## 4. Reporting

Any employee having information which causes the employee to know or to believe that another Company employee has violated this Policy or applicable laws and regulations, should promptly bring the matter to the attention of the Ethics Officer or the Ethics Liaison Officer or through use

of the HOTLINE. If the matter involves violation of U.S. federal law or U.S. government procurement regulations, the employee also may use the DOD HOTLINE. Every effort will be made to hold all such reports in strict confidence, and employees making such reports shall not be subject to retribution, disciplinary action or any other adverse administrative action for such reporting.

**Failure to report known or observed violations of this Policy may also constitute a violation.** An employee who intentionally fails to disclose, hides or covers-up a known or observed violation may be subject to the disciplinary actions specified below, even when such employee was not a violator or a participant.

Upon receiving a report of suspected violations of this Policy or applicable laws and regulations, the Ethics Liaison Officer shall promptly advise the Ethics Officer, who shall immediately conduct or direct an investigation of the incident. If the reporting employee so requests, the name of the reporting employee shall be held in confidence by the Ethics Officer and shall not be disclosed to other corporate employees; provided, however, that the Ethics Officer may provide the name of the employee to the Griffon Ethics Oversight Committee, the authorities or outside counsel retained by the Company to conduct an investigation. The confidentiality of the source of the report shall be maintained to the maximum extent possible.