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September 24, 2010

MEMORANDUM FOR ZACHARY J. LEMNIOS, DIRECTOR, DEFENSE RESEARCH AND ENGINEERING

SUBJECT: LIMITED WAIVER OF PARAGRAPH 2 OF THE ETHICS PLEDGE

Pursuant to the authority delegated under Section 3 of Executive Order 13490, "Ethics Commitments by Executive Branch Personnel" (January 21, 2009), and after consulting with and receiving coordination from the White House Special Counsel for Ethics and Government Reform, I hereby waive the restrictions of Paragraph 2 of the Ethics Pledge ("Pledge") as it applies to you and your former employer, the Massachusetts Institute of Technology ("MIT") to include the MIT Lincoln Laboratory ("Laboratory").

As the Director, Defense Research and Engineering ("DDR&E"), you serve as the senior science and technology executive for the Department of Defense ("DoD") and are responsible for overseeing the activities of the Office of the DDR&E and its eight subordinate organizations. DDR&E is responsible for ensuring that warfighters have superior and affordable technology to support their missions and advanced capabilities to fight and win wars. DDR&E is charged with providing thought leadership for DoD's near-, mid-, and far-term research and engineering efforts, and for developing world class science, technology, engineering, and mathematics capabilities for DoD and the Nation.

Prior to assuming your duties as DDR&E on July 2, 2009, you served as the Chief Technology Officer of the Laboratory. The Laboratory is a federally-funded research and development center ("FFRDC") chartered to apply advanced technology to national security challenges. Its research and development activities focus on long-term technology development as well as rapid system prototyping and demonstrations for DoD. In meeting this objective, the Laboratory works with industry to transition new concepts and technology for system development and deployment. The Laboratory is widely-recognized as possessing unique qualifications in the area of advanced microelectronics and focuses specifically on advanced wartime technology development and system prototyping for national security needs.

Executive Order ("E.O.") 13490 provides that a political appointee will not, for a period of two years from the date of appointment, participate in any particular matter involving specific parties that is directly and substantially related to the employee's former employer or former clients. *See* E.O. 13490, Sec. 1, para. 2. Section 3 of the E.O. provides for a waiver of the recusal provisions upon certification either that the literal application of the restrictions is inconsistent with the purpose of the restriction, or because the waiver is in the public interest. *See* E.O. 13490, Sec. 3(a). The E.O. states that "the public interest shall include, but not be limited to, exigent

circumstances relating to national security or to the economy." *Id.*, Sec. 3(b). Since your appointment, you have strictly complied with Pledge obligations, turning down a variety of opportunities to brainstorm, develop, or evaluate national security related technological or scientific concepts with renowned experts at both MIT and the Laboratory. Absent a waiver of the Pledge restrictions, you will continue to be barred from engaging in such communications for another eleven months.

I have determined, based upon the reasons set forth below, that a limited waiver of the restrictions on you under Paragraph 2 of the Pledge is justified as being in the public interest.

First, your ability to engage in communications with the Laboratory and with other elements of MIT correlates directly to exigent circumstances relating to national security. This is based upon the nature of your position and the fact that the Laboratory is an FFRDC created to support DoD's research efforts. Second, you are singularly qualified to perform the duties because of your level of technical expertise, which uniquely enables you to leverage communications with experts, such as those from MIT and, in particular the Laboratory, for the benefit of DoD. Although other members of your staff can and have engaged in these kinds of communications and meetings, they do not possess your ability to speak for DoD on these matters. As a result, the effect of the Pledge recusal has been to eliminate a key sector of the scientific and technological world from your purview, which is particularly disadvantageous considering DoD's wartime needs. Finally, the primary purpose of the restrictions in paragraph 2 is to address concerns that the former employer may appear to have privileged access, which it may exploit to influence the appointee to its advantage. The danger of special access is negated here because of factors like the Congressional funding cap for FFRDCs, the fact that DDR&E is not responsible for the funding allocation of DoD's FFRDCs, and because you will recuse yourself from decision-making processes tied to specific grants or contracts in which MIT may be an interested party. Accordingly, I have determined that the need for you to communicate with the Laboratory and other components of MIT clearly outweighs any dangers that the restrictions under Paragraph 2 were meant to address.

Pursuant to this limited waiver, you are authorized to participate in non-monetary specific party matters involving the Laboratory and other elements of MIT, including one-on-one and group conversations with MIT, including Laboratory, employees on such matters. This waiver does not permit your involvement in any decisions related to the award or funding of specific procurements, grants or contracts in which MIT, including the Laboratory, is or seeks to be a party.

This waiver is granted with the understanding that you will comply with the remaining provisions of the Executive Order and with all other Government ethics rules.

Jeh Charles Johnson
Designated Agency Ethics Official