



**COMPLIANCE PROGRAM**

**ON**

**FCPA AND ETHICAL BUSINESS PRACTICES**

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**ELANDIA AND ALL U.S. AND FOREIGN SUBSIDIARIES**

**November 2007**

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## **I. POLICY ON FCPA AND ETHICAL BUSINESS PRACTICES**

**eLandia International and each of its U.S. and foreign subsidiaries** (hereinafter "Company" or "eLandia") is committed to maintaining the highest level of professional and ethical standards in the conduct of its business in both the United States and foreign countries where they operate. Compliance with eLandia's standards for honesty, integrity, and fair business practices and the Code of Business Conduct and Ethics as set forth on [www.elandiagroup.com](http://www.elandiagroup.com) ("Code of Ethics") is an integral component of the financial success and reputation of the Company.

One of the U.S. laws directly relevant to this commitment is the U.S. Foreign Corrupt Practices Act, known as the FCPA. The FCPA is a criminal statute that prohibits all U.S. companies and its directors, officers, employees, agents, and stockholders acting on its behalf from offering, promising, paying, or authorizing the payment of anything of value to a foreign official to influence that official in the performance and/or decision-making process of his or her official duties, or to induce the official to exercise his or her influence in any governmental matter. This prohibition applies whether the offer or payment is made directly or indirectly through a third person or entity. The FCPA also requires the Company to maintain a system of internal accounting controls that ensure accurate and complete records of all of its financial transactions. The penalties for violating the FCPA are severe. A Company can face fines in the millions of dollars, the loss of export privileges and eligibility for U.S. Government contracts, insurance, and financing. Individuals can face fines and imprisonment.

Although on the surface the FCPA's requirements and prohibitions seem straightforward, in practice FCPA adherence is often more subtle and difficult to administer, given common business practices in some foreign countries and competitive business practices. It is vital that all employees thoroughly understand, acknowledge and follow/adhere to these compliance guidelines to avoid inadvertent violations and to recognize potential issues in time for them to be appropriately addressed.

In issuing this statement, the Board of Directors and Senior Management of eLandia reaffirm its commitment to conducting its business abroad consistent with the highest ethical standards. To facilitate day-to-day compliance with these ethical standards and legal obligations, the Board of Directors of eLandia is adopting a formal Compliance Program. To oversee and implement this program, the Company is establishing a Compliance Committee, composed of the following eLandia officers: the General Counsel (the "Chief Compliance Officer"), the Chief Financial Officer and the Chief Executive Officer. The Chief Compliance Officer will serve as the Chairperson. The General Counsel for each subsidiary, if any, shall serve as the Compliance Officer for that entity and shall report on Compliance matters to the Chief Compliance Officer. If any subsidiary does not have a General Counsel, the Responsible Officer for the subsidiary (as defined herein) shall be the Compliance Officer for that entity. The Compliance Committee will provide for education and training programs for employees, oversee the preparation of guidelines on specific legal and regulatory matters, respond to inquiries from any employees regarding appropriate business practices, and investigate any allegations of possible impropriety.

To implement the Compliance Program effectively, every person in our Company will be required to make a personal commitment to follow this Policy and the guidelines and procedures set forth herein, and to ensure that our agents, consultants and contractors understand and abide by these requirements. While we do not expect every person in the Company to become

an expert in the laws governing our business, we do expect every employee to adhere to eLandia's Code of Ethics provided at [www.elandiagroup.com](http://www.elandiagroup.com) and this Compliance Program on FCPA and Ethical Business Practices, and to be cognizant of the U.S. and host country's laws that apply to our business. Furthermore, we require that each employee seek guidance from the Chief Compliance Officer whenever any uncertainty regarding those laws or ethical standards arises. Departures from our business standards will not be tolerated.

Most challenges that arise in the course of our international business can be resolved entirely consistently with all applicable laws and standards while still allowing us to do business, if those issues are identified early, addressed cooperatively, and solved thoughtfully. The compliance procedures set forth below are intended to provide our employees with more detailed guidance on the compliance issues that are most likely to arise given the nature of eLandia's business. We encourage you to review these guidelines carefully and to discuss any questions you may have with the Chief Compliance Officer or Compliance Officer of your affiliate company. Each and every employee, contractor, and consultant will be required to acknowledge that they have read the guidelines listed below, understand the process for resolving issues and/or answering questions, and affirm that they are committed to ensuring that all business practices for any transactions on behalf of eLandia are in compliance with the FCPA's requirements and eLandia's Code of Ethics.

## **II. ESTABLISHMENT OF COMPLIANCE COMMITTEE**

### **A. ORGANIZATION**

In order to facilitate the development and implementation of the Compliance Program adopted by the Company, the Company is establishing a Compliance Committee. This Committee will be responsible for developing and overseeing the implementation of this Program. The Compliance Committee will be composed of the General Counsel (the "Chief Compliance Officer"), the Chief Financial Officer, and the Chief Executive Officer. The Chief Compliance Officer shall serve as the chairperson for the Committee. The Compliance Committee will meet upon the request of any member of the Committee, but in no event less than quarterly.

### **B. DUTIES AND RESPONSIBILITIES**

The duties and responsibilities of the Compliance Committee shall include, but not be limited to, the following:

1. To oversee the preparation and issuance of guidelines on specific U.S. and local legal and regulatory issues and matters, including the FCPA.
2. To develop and implement an educational and training program for personnel of the Company, to ensure familiarity with and understanding of all laws and regulations applicable to ethical business activities.
3. To respond to inquiries by employees regarding any aspect of compliance.
4. To investigate any information or allegations concerning possible unethical or improper business conduct.

5. To provide guidance and interpretation to the Board of Directors and Company personnel, on matters related to the Compliance Program.
6. To prepare, on an annual basis, a report to the Board of Directors concerning the compliance activities and actions undertaken during the preceding year, the proposed compliance program for the next year, and any recommendations for changes in the Compliance Program.
7. To perform such other duties and responsibilities as the Board of Directors may request.

### **III. EDUCATIONAL PROGRAM**

#### **A. NEED OF AND RESPONSIBILITY FOR EDUCATIONAL PROGRAM**

A primary purpose of the Compliance Program is to promote adherence to the highest level of professional and ethical standards, as well as all applicable laws and regulations. In order to ensure that all employees are thoroughly familiar with those areas of the law that apply to and impact upon the conduct of the business affairs of the Company, the Company will provide and make available appropriate educational and training programs and resources. The Compliance Committee is charged with the primary responsibility for implementation of the educational and training program. The program is intended to provide an appropriate level of information and instruction for each employee of the Company regarding the laws and regulations applicable to the activities of each employee.

#### **B. EDUCATIONAL METHODOLOGY**

The Compliance Committee will make use of the following methods in implementing the educational program:

1. The General Counsel, with the support of outside counsel, will prepare written information explaining the applicability of pertinent laws and issue detailed guidelines concerning compliance. The written information will be made available to all employees. The General Counsel will update and revise the written information as appropriate.
2. In addition to formal written guidance, the Company will conduct training sessions regarding compliance. These seminars will be mandatory for selected employees.
3. The Compliance Committee may recommend that certain employees attend, at Company expense, publicly available seminars covering particular areas of law.
4. The Company's orientation program for new employees will include discussions of the Compliance Program and an employee's obligation to maintain the highest level of ethical conduct and standards.

### **IV. EMPLOYEE OBLIGATIONS**

The Compliance Program imposes several obligations on Company employees. These obligations will be enforced by the standard disciplinary measures available to the Company as an employer. Similarly, the cooperation of employees in implementing the Compliance Program will be properly reflected in personnel evaluations.

**A. SPECIFIC EMPLOYEE OBLIGATIONS UNDER THE COMPLIANCE PROGRAM**

1. *Reporting Obligation.* Employees must make an immediate report of any suspected or actual violations (whether or not based on personal knowledge) of applicable law or regulations to a member of the Compliance Committee. Once an employee has made a report, the employee still has an obligation to update the report as new information comes into his/her possession. Under no circumstances shall the reporting of any such information or possible impropriety serve as a basis for any retaliatory actions to be taken against any employee making the report.
2. *Certification Obligations.* Each employee will be required to complete and sign, on not less than an annual basis, a certification (to be developed by the Compliance Committee) that the employee fully understands the Compliance Program, and that the employee fully acknowledges his/her commitment to comply with this Program. Each acknowledgment statement shall form a part of the personnel file of each employee. It shall be the responsibility of each manager to ensure that all employees under his/her supervision have executed such an acknowledgment on an annual basis.

**B. COMPANY ASSESSMENT OF EMPLOYEE PERFORMANCE UNDER COMPLIANCE PROGRAM**

1. *Violation of Applicable Law or Regulation.* If an employee violates eLandia's Policy or any law or regulation in the course of his/her employment, the employee will be subject to sanctions from the Company. These sanctions include, but are not limited to, termination, suspension, demotion, reduction in pay, and reprimand.
2. *Failure to Follow Compliance Program.* In addition to direct participation in an illegal act, employees will be subject to disciplinary actions by the Company for failure to cooperate in implementing the Compliance Program. Examples of actions or omissions that will subject an employee to discipline on this basis include, but are not limited to, the following:
  - (a) failure to report a suspected or actual violation of law;
  - (b) failure to make, or falsification of, any certification required under the Compliance Program;
  - (c) lack of attention or diligence on the part of supervisory personnel that directly or indirectly leads to a violation of law; or
  - (d) direct or indirect retaliation against an employee who reports a violation.

### **C. EMPLOYEE EVALUATIONS**

Employee participation in, and attitude toward, Compliance Program activities will be an element of annual personnel evaluations. As such, employee participation in, and attitude toward, the Compliance Program will affect decisions concerning compensation, promotion and retention.

### **V. ACCOUNTING BOOKS AND RECORDS**

Compliance with the accounting and internal accounting control procedures of the Company is mandatory. The books and records of each eLandia subsidiary shall at all times be maintained and recorded in compliance with local law and GAAP. All accounting records, expenditures, expense reports, invoices, vouchers, gifts, business entertainment, and any other business expenses must be accurately and reliably reported and recorded. False or misleading entries or invoices are prohibited.

Any and all payments by or on behalf of the Company may only be made pursuant to existing approval authorities and other internal control requirements, and only on the basis of appropriate supporting documentation and for the purposes specified in the documentation. Such purposes shall be recorded in accordance with applicable corporate procedures.

Undisclosed or unrecorded payments or assets are strictly prohibited. No cash transactions (except for petty cash) shall be conducted without the prior written approval of the Compliance Officer. No payments shall be made outside of the country of the eLandia subsidiary making the payment (other than to another eLandia entity) without the prior written approval of the Compliance Officer.

Failure to adhere to these principles and procedures will result in immediate disciplinary action.

Annually compliance reviews shall be undertaken on a periodic basis as determined by the Compliance Committee and approved by the Governance Committee, Such compliance reviews shall include:

- documenting and evaluating the system of internal accounting controls, including obtaining annual confirmations of compliance from the various subsidiaries;
- reviewing, on a test basis, high risk transactions and contracts to evaluate compliance with the FCPA and local law; and
- reviewing compliance with eLandia's Code of Ethics and its Compliance Program.

## **VI. COMPLIANCE PROCEDURES**

### **A. INTRODUCTION**

These Compliance Procedures are intended to provide guidance and establish procedures for implementing eLandia's Code of Ethics.

The purpose of these Compliance Procedures is to ensure eLandia's full compliance with U.S. laws and regulations, including the FCPA, with the local laws in each country in which the Company operates, and with customer requirements and good business practices.

### **B. OVERVIEW OF THE FCPA**

The FCPA has two major components: (1) antibribery prohibitions; and (2) accounting and recordkeeping requirements. Both components apply to the Company's international business activities. Sanctions for FCPA violations, and even for mere investigation for a potential violation, are severe and potentially devastating to the Company and to the individuals involved.

#### **1. Antibribery Prohibitions**

The FCPA is a U.S. criminal statute that prohibits and sanctions the use of improper payments to foreign government officials, political parties and candidates for political office, and employees of international organizations, to obtain or retain business in a foreign country, or to direct business to any person. The FCPA prohibits a U.S. company and its officers, directors, employees or agents from offering, giving, paying, promising, or authorizing the payment, directly or indirectly through a third party, of anything of value to any "foreign official" -- a term that is very broadly defined — to persuade that official to help the Company, or any other person, obtain, maintain and/or provide an unfair competitive advantage for U.S. business dealings in foreign countries. A "foreign official" includes employees of State-owned commercial entities.

#### **2. Accounting and Recordkeeping Requirements**

The FCPA also requires eLandia, including all of its controlled affiliates to maintain accurate and complete records of all transactions in which it engages and to devise and maintain a system of internal accounting contracts. The FCPA also requires the Company to make good faith efforts to ensure that the ventures in which it owns a minority interest also keep such records. In particular, the FCPA requires:

- The keeping of books and records that, in reasonable detail, reflect the transactions and asset dispositions of the issuer; and
- The development and maintenance of a system of internal accounting controls that provides reasonable assurances that:
  - o Transactions are carried out as authorized by management;

- o Transactions will be recorded to maintain accountability for assets and to permit preparation of GAAP-based financial statements;
- o Access to assets is allowed only as authorized by management; and
- o There are periodic audits.

### **3. Third-Party Liability**

The FCPA establishes liability for payments made indirectly to an official as well as payments made directly. The Company and individual directors, officers or employees may be liable for a payment made by a third party, such as a joint venture partner, agent, or consultant, and even in some cases resellers and prime contractors - parties which themselves may not be subject to the FCPA - if the Company makes a payment or transfers other value to that third party "knowing" that it will be passed through to a government official.

The FCPA's definition of "knowing" goes beyond actual knowledge. A firm belief that the third party will pass through all or part of the value received from the Company to a government official, or an awareness of facts that create a "high probability" of such a pass-through, constitute knowledge under the FCPA. Company personnel should be particularly alert to any "red flags" that they may encounter in transactions with third parties.

### **4. Penalties and Enforcement**

The FCPA has both criminal and civil aspects, and is aggressively enforced by the Department of Justice and the Securities and Exchange Commission. These agencies investigate allegations that come to their attention through a variety of sources. Statutory criminal penalties for individuals include fines up to \$100,000 per violation or imprisonment up to five years, or both. Individual directors, officers, and employees of companies may be prosecuted, even if the company for which they work is not. Fines assessed against individuals may not be reimbursed by the company. Companies may be fined up to \$2 million per violation. However, due to the alternative provisions of the Sentencing Reform Act, these penalties can be increased significantly. In a recent prosecution, by both the Department of Justice and the SEC, the total fines and penalties came to \$44 million, and included disgorgement of more than \$24 million in profits which the Company had realized on the transaction that gave rise to the violation. The FCPA also allows a civil action for a fine of up to \$10,000 against any firm that violates the antibribery provisions of the FCPA, and against any director, officer, employee or agent of a company who willfully violates the antibribery provisions of the Act.

The Company can suffer harsh consequences even if it is not convicted and the statutory penalties are not brought into play -- mere indictment under the FCPA triggers sanctions. Perhaps most directly relevant to our businesses, the sanctions can include loss of U.S. Government financing and insurance, and suspension or debarment from U.S. Government contracts and licenses to operate both in the United States and abroad. FCPA prosecutions often include charges of other criminal violations, such as mail and wire fraud and conspiracy, further compounding the potential penalties, and may lead the Company's competitors to file treble-damages claims against the Company. Those actions can move forward even if the Company is not convicted of the FCPA offense. FCPA violations, moreover, can trigger, or stem

from, investigations by the government of the host country, risking both penalties under foreign law and loss of good will.

## **C. BUSINESS ENTERTAINMENT AND GIFTS**

### **1. Business Entertainment**

Reasonable business entertainment expenditures can play an important role in strengthening personal relationships and promoting the Company's services. It is integral to fostering relationships with customers. Nevertheless, the provision of business entertainment, if abused, can create the appearance of impropriety, if not worse.

The principal guide in providing business entertainment is a rule of reasonableness. The Company should be cautious and conservative, and ensure that such expenditures conform to generally accepted local custom, and are permitted under local law and the customer's organizational guidelines.

In providing business entertainment to foreign officials and to employees of private commercial customers, the following guidelines must be followed:

- (a) The contemplated entertainment must be unequivocally ordinary and reasonable.
- (b) The business entertainment expenditures should be commensurate with local custom and practice.
- (c) The business entertainment expenditures should avoid even the appearance of impropriety.
- (d) The type and expense of entertainment should be permissible under customer guidelines.
- (e) The expenditure should be properly recorded in the Company's books and records.

### **2. Gifts by the Company**

A gift of nominal value provided to a government official or the employee of a commercial customer as a courtesy, token of regard, or expression of gratitude, in accordance with the customs of the local country, is often an important and expected means of fostering good relationships. However, an inappropriate gift can create an appearance of impropriety or worse.

Accordingly, it is important that any gift be tasteful and appropriate for the occasion, modest in value and unequivocally customary. As a general rule, the gift should be for business, rather than personal use. The intent of the gift should always be to promote, foster, and/or expand the relationship of the Company with its customers. The giving of a gift to

a customer with this intent would be reimbursable by the Company, provided that proper documentation, including receipts, as well as an explanation as to business purpose, are furnished.

In providing a gift to a foreign official, or an employee of a State-owned entity or commercial customer, the following guidelines should be observed:

- (a) A gift should be provided as a courtesy or token of regard or esteem, or in return for hospitality.
- (b) The gift should be of a type and value that is unequivocally customary in the foreign country and appropriate for the occasion.
- (c) The value of the gift should not exceed the equivalent of seventy-five (75) U.S. dollars, without prior approval by the Compliance Officer of the subsidiary, or the Chief Compliance Officer of eLandia.
- (d) A gift in cash is prohibited.
- (e) The gift must be permissible under the local laws of the relevant country and the guidelines and regulations of the customer organization.
- (f) Where appropriate, the gift should be for business, rather than for the individual or personal use of the recipient.
- (g) The expense must be properly and accurately recorded in the Company's books and records.

#### **D. SELECTION AND APPOINTMENT OF AGENTS, CONSULTANTS AND OTHER THIRD PARTIES IN FOREIGN COUNTRIES**

The Company may in certain circumstances utilize the services of independent third parties such as agents or consultants to facilitate its business activities. These persons or entities can have a significant impact not only on the Company's sales, but also on its image and reputation. Accordingly, it is important that these persons and entities be selected and screened carefully.

The procedures and practices specified herein apply to the selection and appointment by the Company of all independent third parties who will act on behalf of the Company with regard to foreign governments, foreign government representatives and foreign government accounts on international business development and retention and similar activities.

##### **1. Procedures for Selection and Appointment of Agent, Consultant or other Third Party**

The officer with executive responsibility for the subsidiary (the "Responsible Officer") is responsible for: (1) identifying the need for an agent or consultant; (2) investigating candidates, including their reputation, financial stability and technical competence; and (3) selecting an appointee.

In discharging these responsibilities, the Responsible Officer must follow the following procedures:

- (a) Obtain from all candidates an International Application for Appointment (Attachment A).
- (b) Contact all references and prepare a written summary of all comments.
- (c) Select a candidate, paying particular attention to the following criteria:
  - i. resources and expertise
    - financial resources
    - personnel
    - professional and commercial qualifications
    - experience with customers in the industry
    - knowledge of the industry
    - experience (measured by years in operation and also successful representation of other companies)
  - ii. reputation for integrity in business practices
    - good standing in the business community
    - sound business practice standards
    - absence of conflicts of interest
    - good relationships with potential customers
    - good government relations
    - favorable institutional appraisals

If there is any question as to a candidate's fitness for performance, or if a "red flag" is raised, this must be fully investigated prior to retaining the candidate. No candidate should be retained until all concerns have been resolved.

- (d) Review the eLandia Policy with the candidate; ensure that the candidate fully understands the Company's commitment to the Policy as well as the Company's requirement that its agent or consultant comply with it; secure the candidate's concurrence in that Policy; and confirm that the candidate executes the Certification at the end of the International Application for Appointment.
- (e) Obtain the approval of the Compliance Committee by: (i) contacting the General Counsel to obtain the appropriate request form; (ii) complete and execute said request form; (iii) submit the request form to the Compliance Committee for prior written authorization before hiring.
- (f) Forward all documentation to the General Counsel of the Company or the subsidiary for the preparation of the contract.

- (g) All payments to said agents, consultants or other third parties must be made with prior approval from the Compliance Committee.

## 2. **Due Diligence and Red Flags**

Due diligence must start at the initiation of the selection process and continue throughout the term of the relationship. If, at any time, a red flag is recognized by any employee, the issue must be examined and resolved in consultation with eLandia's General Counsel. Red flags such as the ones listed below are caution signals that should trigger further review. If there is a legitimate explanation for the circumstance, that finding should be documented. If, on the other hand, the investigation suggests the probability of a Policy violation, appropriate steps (up to and including the immediate termination of any agreement) should be swiftly taken, with the advice of legal counsel.

### 1. Examples of Red Flags:

- Abnormal commissions or price discounts.
- Unusual payment requests, such as up-front payments, payment in third countries, or midstream requests for additional compensation.
- Possible unethical practices, such as preparing false documents, press reports of improprieties, false answers to questions.
- Relations to government officials, such as principals who are related to government personnel, or owners or employees who hold government positions.
- Comments that infer bribery will or has taken place.
- Apparent lack of commitment to this Policy.
- Termination of agreement by other clients.
- Unfavorable reference checks.
- Requests to keep relationship secret.
- Lack of concern about product quality, training or warranty.
- Request for additional compensation for a sales project.

### **3. Contract**

a. The General Counsel of the Company or of the subsidiary working on the transaction will prepare the appropriate agreement. When requested, the General Counsel will assist the Responsible Officer in the negotiation of the agreement.

b. An agreement with the candidate should reflect the entire understanding between the Company and the agent or consultant. Commitments must not be made which are not part of the written agreement. The agreement should also contain a clear, explicit prohibition against illicit payments and provide for the immediate termination of the agreement in the event of a breach. Model contract provisions dealing with ethical business conduct, set forth at Attachment B, should be included in all agreements.

c. Once executed, the agreement will be administered by the Responsible Officer.

d. Should renewal, amendment or termination of a consultant or other third party relationship become desirable, the Responsible Officer should forward to the General Counsel of the Company or subsidiary a written request for renewal, termination, or amendment, and obtain the necessary management approvals. Before an agreement is renewed, the original screening of the consultant or the other third party relationship must be updated. The eLandia Policy should be reviewed by the General Manager with the agent or consultant and a new Policy Acknowledgment Form executed contemporaneously by both parties. Any changes in the management of the agent or consultant may warrant obtaining a new Dunn & Bradstreet or other similar Report. Substantive changes in the terms of the agreement should be reflected in a written amendment

### **4. Compensation**

Compensation of the agent, consultant and other third parties should be established considering the following criteria:

- Standard rates for such services in the served market.
- Past performance and compensation.
- Competence and resources utilized.
- Complexity of activities and transactions.
- Duration and nature of contact with the customer.

## **E. JOINT VENTURES, MERGERS, AND ACQUISITIONS**

The Company is also potentially liable for the activities of its joint venture partners and the joint venture entities themselves, and is also potentially liable for the activities of any entity before its acquisition by the Company

Where a company is a majority partner in the venture, it will typically control the venture's budget, policies, and decision-making. As the majority-interest holder, the Company must establish and enforce the code of conduct to be followed by the venture and secure commitments from its partners to abide by that code, including commitments not to make payments that violate the Company's Code of Ethics. The FCPA also requires the Company to ensure that the venture adheres to the accounting and recordkeeping requirements. The Company must monitor the entity's compliance with these requirements, including its venture partners on transactions relating to the venture.

The Company is also potentially liable for joint venture or venture partner activities even where it is a minority or 50% partner that cannot by itself control either the joint venture or its partners. In such cases, the Company must police the venture's activities. If the Company were to make no effort to do so, and the venture or a venture partner made improper payments, a court could find that the Company in effect authorized the payments. Similarly, the Company's authorization of improper payments could be implied where the Company or its employees "knew" or had reason to know about improper payments and chose to accept the benefits of payments, without taking steps to oppose them.

Before entering a joint venture, merger or acquisition, the Company's policy is to take the following precautionary steps to minimize the potential for vicarious liability in a joint venture.

- Establish lines of communication between the business people working on the venture, merger or acquisition and the General Counsel's office. Cooperation is essential to effective compliance.
- Under the supervision of the General Counsel and as appropriate, outside counsel, develop a plan for due diligence on any potential target acquisition or merger candidate. No acquisition or similar agreement may be executed in the absence of a complete due diligence procedure and prior written approval of the General Counsel.
- Perform due diligence regarding all potential joint venture partners to identify any business risks and any "red flags" that suggest possible FCPA issues or other legal or business risks. "Red flags" come in all shapes and sizes, such as:
  - o Due diligence suggests that the foreign partner is a shell company or has other irregularities in corporate structure or operations
  - o The foreign partner or a principal shareholder has a government affiliation (directly or through close relatives)
  - o The foreign partner cannot contribute anything to the venture except influence with government agencies or officials
  - o The foreign partner refuses to agree to reasonable financial and other controls in the joint venture
  - o The proposed relationship with the foreign partner is not in accordance with local laws or rules, including civil service rules concerning outside interests for any government officials involved

- o The foreign partner has a reputation for bypassing normal business channels, particularly in activities involving the government
- o The foreign partner requests approval of a significantly excessive operating budget or unusual expenditures
- o The Company learns that the foreign partner made an improper payment to the relevant government officials before entering the venture
- o The foreign partner insists on financial terms that are unduly generous to it in light of its contributions to the venture
- Assess the red flags and accompanying risks uncovered in the due diligence and develop safeguards to ensure compliance with the applicable laws and to protect against liability. Issues that are identified early in the process and approached thoughtfully usually can be resolved without jeopardizing the business interests at stake.
- Negotiate contract provisions to ensure that the venture complies with the FCPA antibribery rules and its accounting and recordkeeping requirements. These provisions will vary somewhat depending on the issues uncovered by due diligence, and on the Company's leverage in the venture, and should be developed in cooperation with the General Counsel's office.
- Negotiate contract provisions that ensure the Company's right to unfettered access to the venture's accounting records and audit the venture's books and records at reasonable intervals.

Once the venture is established:

- Where the Company has a majority interest, we are required by law to ensure that the venture complies with the FCPA accounting and recordkeeping requirements. The Company should have unfettered access to the venture's accounting records.
- Where the Company has a minority interest, we are required by law to make a good faith effort to make sure that the venture complies with the FCPA accounting and recordkeeping requirements.
- In all ventures, the Company must, as a matter of Company policy, be vigilant in its compliance efforts and monitor the venture's operation on an ongoing basis. Contractual safeguards may only be as good as our efforts to enforce them. In particular, watch for:
  - excessive, false, misleading or inadequately justified payment requests, especially to either blind or offshore accounts or payments to third parties.
  - unusual or overly generous subcontracts.
  - vague contractual terms which don't have auditable performance metrics.
  - unusual or incomplete documentation.
  - refusals or failures to provide requested documentation.

## F. FACILITATING PAYMENTS

In some circumstances, a payment to an official may qualify under the FCPA's narrow exception for payments to secure routine governmental actions. Facilitating payments are payments made to expedite or facilitate:

- obtaining business permits;
- processing governmental papers such as visas;
- providing police protection, mail delivery, or scheduling inspections associated with contract performance or the shipment of goods;
- providing phone, power or water service, loading and unloading cargo; or
- other similar activities which are ordinarily and commonly performed by an official.

As these examples show, facilitating or "grease" payments merely expedite actions that should be performed in any event and do not involve discretionary action by a government official. Facilitating payments may not be made to induce a government official or employee to ignore his or her lawful duty. Official decisions whether to award new business or continue business with a particular party (including discretionary decisions regarding compliance with building codes and mortgage approvals) will never be considered routine governmental action.

Thus, for example:

- A payment to speed an agency's processing of loan documentation may qualify for the exception, but that same payment would not qualify for the exception if it is made to induce a government employee to overlook deficiencies in the documentation.
- A payment to a building inspector to inspect new homes this week, instead of next month, may qualify for the exception - a payment to the inspector to make sure the homes pass muster would not.

Payments made to influence a discretionary action would not be deemed to be a facilitating payment, and would be prohibited. Accordingly, payments to secure an action over which the foreign official exercises some discretion, such as obtaining a low duty rate from a customs officer, or obtaining a tax refund, are prohibited.

The Compliance Procedures strongly discourage but do not prohibit under certain circumstances, modest facilitating payments (i.e. less than 100 U.S. dollars) provided such payments are customary and necessary in the local country in order to expedite or secure such actions.

In determining whether to make a facilitating payment, the following procedures must be followed:

- Seek the advice of the General Counsel with respect to whether facilitating payments may be made in a particular country.

- Determine whether the payment is clearly and unequivocally for a clerical, non-discretionary activity. If this is not clear, consult with the General Counsel.
- Determine whether the payment is intended to expedite or secure a service or action that the Company is otherwise entitled to, and that the government employee ordinarily performs.
- Ensure that the payment is a modest amount (i.e. less than 100 U.S. dollars) which is being provided only to a low-level government employee.
- Ensure that the payment for the particular action is unequivocally customary and expected in the society. If uncertain, consult with the General Counsel.
- Ensure that any such payment is properly and accurately recorded in the books and records of the Company.

eLandia's international business operations requires frequent, often daily, contact with government officials. It can be difficult to determine whether a payment is merely a facilitating payment or a prohibited payment. If you have any doubt whether a payment falls within the exception, contact the General Counsel's office. Additionally, consult with the Controller if you have any questions about how to describe these payments in Company records, or if you learn or suspect that the payments are not being accurately described in the records.

## **G. THE BASICS: GROUND RULES TO REMEMBER**

The on-the-spot reactions of individual employees to requests for payments and rumors of red flags are critically important to the Company's ability to prevent payments, and to protect itself from liability. So, remember:

- If you hear rumors of improper payments or red flags, report them to the General Counsel immediately.
- If you receive a request for an improper payment from an official, joint venture partner, or a third party:
  - o Refuse to make the payment; explain that eLandia does not make such payments.
  - o Instruct the joint venture partner or third party that they are not authorized to make the payment on the Company's behalf, and explain that we cannot continue to do business with them if they make the payment.
  - o Make clear that your refusals are absolute, and do not come with a "wink and a nod."
  - o Immediately report the request to the General Counsel; wait for their instructions on next steps.

\* \* \* \* \*

A violation of the FCPA can result in serious consequences for the Company and for the individuals involved. Issues that arise under the FCPA can be subtle and require difficult judgments. Company personnel should consult with the General Counsel's office or the Chief Financial Officer, as appropriate, when questions arise and must not try to make these judgments on their own. The company is committed to compliance and will impose appropriate sanctions – including, where appropriate, termination of employment – for violations of its policies and failure to follow its procedures.

## ATTACHMENTS

**ATTACHMENT A**

**APPLICATION FOR APPOINTMENT**

TYPE OF APPOINTMENT DESIRED:

\_\_\_\_\_ AGENT  
\_\_\_\_\_ CONSULTANT  
\_\_\_\_\_ OTHER (specify) \_\_\_\_\_

Country(ies) of Appointment \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I. ORGANIZATION OF APPLICANT

A. Company Name

Address \_\_\_\_\_  
Country \_\_\_\_\_  
Telephone Number \_\_\_\_\_  
(Country code & City Codes)  
Facsimile Number \_\_\_\_\_  
Internet Address \_\_\_\_\_

B. Legal Status of Company \_\_\_\_\_ Proprietorship \_\_\_\_\_ Partnership  
\_\_\_\_\_ Corporation \_\_\_\_\_ Other (Specify)

C. Date and Place of Establishment: \_\_\_\_\_

D. Ownership

<u>Owner(s)</u>	<u>Nationality</u>	<u>Percent Ownership</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

E. Previous company name/names \_\_\_\_\_

NOTE: EACH PAGE OF THIS APPLICATION AND OF THE ATTACHED POLICY STATEMENT SHOULD BE INITIALED BY THE APPLICANT.

F. Affiliates

Indicate nature (e.g. full name, type of business, where business conducted) and relationship of any parent, subsidiary or affiliated entities and describe their business operations:



GENERAL BACKGROUND

A. Describe any previous or current relationship with eLandia, or any of the affiliated companies:

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B. Provide the following information about current agent or consultant relationships (use additional sheets if necessary) with any U.S. or foreign product or services related company:

(1) Company (Name and Address) \_\_\_\_\_

Country of Incorporation: \_\_\_\_\_  
Name and Tel. Number of Principal Contact at Company \_\_\_\_\_

Services or Products Represented \_\_\_\_\_

Annual Sales Volume \_\_\_\_\_

(2) Company (Name and Address) \_\_\_\_\_

Country of Incorporation: \_\_\_\_\_  
Name and Tel. Number of Principal Contact at Company \_\_\_\_\_

Services or Products Represented \_\_\_\_\_

Annual Sales Volume \_\_\_\_\_

III. FINANCIAL REFERENCES

Indicate primary banking relationships, principal suppliers, and other relevant sources of financial support.

<u>Name</u>	<u>Address</u>	<u>Contact Name</u>	<u>Tel. Number</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

IV. OTHER REFERENCES (in addition to those listed in II.B. above)

<u>Name</u>	<u>Address</u>	<u>Contact Name</u>	<u>Tel. Number</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

V. ADDITIONAL INFORMATION

A. Has the applicant or any subsidiary or affiliate of the applicant been the subject of past or pending litigation, or government investigation? If yes, describe below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

B. Has the applicant, or any subsidiary or affiliate of the applicant, or any owner, officer, director or employee of the applicant's organization ever been the subject of a criminal investigation, indictment, or a similar proceeding? If yes, describe below:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

C. Has the applicant, or any subsidiary or affiliate of the applicant, or any owner, officer, director or employee of the applicant's organization ever been convicted in any criminal matter? If yes, describe below:

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D. Has the applicant, or any owner, officer, director or employee of the applicant's organization ever been the subject of a dishonorable discharge or dismissal, from a military organization or other government office? If yes, please describe below:

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VI. OTHER INFORMATION

Please provide any additional information that will assist the Company in evaluating your application.

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VII. CERTIFICATION

By signing this International Application for Appointment, I certify that the information provided is true and accurate. I further certify that I have received, read and fully understand the eLandia Policy on Ethical Business Practices (copy attached), and that, if this application is accepted, the company on whose behalf I am signing will comply fully with such Policy. I further understand that any misrepresentation made in this application will constitute grounds for termination of this and any subsequent agreement my company may enter into with eLandia or any of its affiliated companies.

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

## ATTACHMENT B

### MODEL CONTRACT PROVISION FOR AGENT, CONSULTANT OR OTHER THIRD PARTIES

1. The [third party] hereby represents and warrants that:
  - (a) In carrying out its responsibilities under the Agreement, the [third party] shall not pay, offer or promise to pay, or authorize the payment directly or indirectly of any monies or anything of value to (i) any person or firm employed by or acting for or on behalf of any customer, whether private or governmental, or (ii) any government official or employee or any political party or candidate for political office, for the purpose of inducing or rewarding any favorable action by the customer in any commercial transaction or in any governmental matter.
  - (b) No owner, partner, officer, director or employee of the [third party] or of any parent or subsidiary company of the [third party] is or will become an official or employee of the government during the term of this Agreement, unless such person obtains the prior written approval of the Company; and
  - (c) No rights or obligations of, or services to be rendered by the [third party] under this Agreement shall be assigned, transferred or subcontracted to any third party without the prior written consent of the Company.
2. In the event the Company has reason to believe that a breach of any of the representations and warranties in Article 1 has occurred or will occur, the Company may withhold further [delivery of products] [commission payments] until such time as it has received confirmation to its satisfaction that no breach has or will occur. The Company shall not be liable to the [third party] for any claim, losses or damages whatsoever related to its decision to withhold [delivery] [commission payments] under this provision.
3. In the event the Company has reason to believe that a breach of any of the representations and warranties in Article 1 has occurred or will occur, the Company shall have the right to audit the [third party] in order to satisfy itself that no breach has occurred. Upon request by the [third party] the Company shall select an independent third party to conduct an audit in order to certify to the Company that no breach has or will occur. The [third party], shall fully cooperate in any audit conducted by or on behalf of the Company.
4. In the event of a breach of any of the representations and warranties in Article 1, this Agreement may automatically be canceled by- the Company upon receipt by the [third party] of written notice of cancellation, and any claims for payment by the [third party], including claims for sales previously concluded or sales previously rendered shall be canceled. The [third party] shall further indemnify

and hold the Company harmless against any and all claims, losses or damages arising from or related to such breach or the Company's cancellation of the Agreement, or both.

5. This Agreement may be terminated by either party without cause upon thirty (30) days written notice.
6. In no event shall the Company be obligated under this Agreement to take any action or omit to take any action that the Company believes, in good faith, would cause it to be in violation of any U.S. laws, including the Foreign Corrupt Practices Act.