PROPOSED CHARGING LETTER

Wahid Nawabi
President & CEO
900 Innovators Way,
Simi Valley, CA 93065

Re: Alleged Violations of the Arms Export Control Act and the International Traffic in Arms Regulations by AeroVironment, Inc.

Dear Mr. Nawabi:

The Department of State ("Department") proposes to charge AeroVironment, Inc., including its operating divisions, subsidiaries, and business units "(Respondent") with violations of the Arms Export Control Act (AECA), 22 U.S.C. 2751 *et seq*., and the International Traffic in Arms Regulations (ITAR), 22 CFR parts 120-130, in connection with the unauthorized export of defense articles, to include technical data; failure to properly maintain records involving ITAR-controlled transactions; and violations of the provisos, terms, and conditions of export authorizations. A total of 10 violations are alleged at this time.

The essential facts constituting the alleged violations are described herein. The Department reserves the right to amend this proposed charging letter, including through a revision to incorporate additional charges stemming from the same misconduct of Respondent. This proposed charging letter, pursuant to 22 CFR § 128.3, provides notice of our intent to impose debarment or civil penalties or both in accordance with 22 CFR §§ 127.7 and 127.10.

When determining the charges to pursue in this matter, the Department considered a number of mitigating factors. Most notably: (a) the Respondent submitted 14 voluntary disclosures pursuant to 22 CFR § 127.12 that acknowledged a portion of the charged conduct and other potential ITAR violations; (b) the Respondent instituted a number of self-initiated compliance program improvements during the course of the Department's review; (c) the Respondent entered into an agreement with the Directorate of Defense Trade Controls (DDTC) tolling the statutory period; and (d) there is no indication that the violations caused harm to U.S. national security.

The Department also considered countervailing factors, including: (a) a systemic lack of authorization management and attention to provisos, terms, and

conditions of export authorizations; (b) an unknown number of instances where Respondent failed to properly maintain records as required by the ITAR; and (c) the involvement of Significant Military Equipment (SME).

We note that had the Department not taken into consideration Respondent's significant mitigating factors, the Department may have charged Respondent with additional violations. In the absence of such action, charges against and penalties imposed upon Respondent would likely be more significant.

This proposed charging letter describes certain violations for the time period from June 5, 2014 to December 22, 2016.

## JURISDICTION

Respondent is a corporation organized under the laws of the State of Delaware and a U.S. person within the meaning of 22 CFR § 120.15. Respondent is subject to the jurisdiction of the United States.

Respondent was engaged in the manufacture and export of defense articles and was registered as a broker, manufacturer, and exporter DDTC, in accordance with 22 U.S.C. 2778(b) and 22 CFR § 122.1 during the period described herein.

The described violations relate to defense articles, including technical data, controlled under Categories VIII, XI, and XII of the United States Munitions List (USML), 22 CFR § 121.1, at the time the violations occurred. Some of the relevant defense articles are further defined as SME, requiring a DSP-83 Non-transfer and Use Certificate.

## BACKGROUND

Respondent designs and manufactures unmanned aircraft systems (UAS) and tactical missile systems for use in the government and defense sectors. Respondent primarily manufactures these systems for defense purposes and a small portion for non-defense related uses. Respondent engages in both domestic and foreign sales.

## VIOLATIONS

ITAR violations included in this proposed charging letter are derived from Respondent's voluntary disclosures to the Department submitted in accordance

with 22 CFR § 127.12. Due in part to the large number of violations over an extended period of time, the Department provides a summary of the violations. The violations fall into five general categories: (1) unauthorized exports of UAS to Canada and failure to obtain End Use Certifications for UAS and parts, components, and accessories exported to Canada; (2) unauthorized exports of technical data in the form of UAS user manuals to Australia, France, Canada, and Thailand; (3) unauthorized exports of Shrike UAS to the United Kingdom; (4) violations of the provisos, terms, and conditions of licenses and other approvals; and (5) failure to properly maintain records involving ITAR-controlled transactions. The conduct is not localized to a specific facility, product line, sales territory, or authorization type.

I. Unauthorized Exports of UAS to Canada and Failure to Obtain End Use Certifications for UAS and Parts, Components, and Accessories Exported to Canada

On June 16, 2017, Respondent disclosed multiple unauthorized exports to Canada of UAS controlled under ITAR Categories VIII and XII and multiple failures to obtain DSP-83 End Use Certifications for various exports to Canada of UAS and parts, components, and accessories controlled under ITAR Categories VIII, XI, and XII. These exports occurred between 2014 and 2016 for either the purpose of returning articles after repair or for use as spare systems destined for end-user MDA Systems Ltd. in Canada or the Canadian Army. At the time of export, Respondent claimed use of Canadian license exemption in 22 CFR § 126.5(b) for the UAS exports. However, Respondent could not use the Canadian exemption to export certain defense articles and should have obtained export licenses for these exports. Additionally, several exports to MDA Systems Ltd. involved SME articles, for which Respondent failed to obtain DSP-83, End Use Certifications.

II. Unauthorized Exports of Technical Data in the Form of UAS User Manuals to Australia, France, Canada, and Thailand

On February 13, 2015 and subsequent dates, Respondent disclosed unauthorized exports of technical data to Australia, France, Canada, and Thailand. In each case, Respondent exported operation manuals that provided information beyond the scope of authorizations.

Until April 2015, Respondent used one basic version of its manual for all customers. The manual historically contained certain high-level information about

using UAS for targeting operations. While Respondent did not export detailed UAS targeting capabilities or Selective Availability Anti–Spoofing Module without authorization, some information regarding the use of such capabilities was included in the manuals.

Respondent obtained four licenses to export Puma, Puma AE, and Qube UAS systems and associated user manuals. These licenses contained numerous provisos that prohibited the export of information on detailed performance of UAS. Respondent violated 35 license provisos.

III. Unauthorized Exports of Shrike UAS to the United Kingdom

On September 30, 2016, Respondent disclosed that on July 13, 2016, Respondent exported without authorization four (4) M3/M4 Shrike UAS, USML Category VIII(a)(5), to the United Kingdom Ministry of Defense (UK MOD). Respondent had submitted a DSP-5 export application to DDTC on June 29, 2016 to export the four Shrike UAS to the UK MOD. DDTC, however, did not issue the DSP-5 license until August 1, 2016, over two weeks after Respondent exported the four Shrike UAS to the UK MOD.

IV. Violation of Terms or Conditions of Authorizations and Failure to File Exports with the Automatic Export System (AES)

On April 15, 2015, Respondent obtained a DSP-5 license to export 14 WASP AE DDL M2 Systems to XTEK Ltd., Australia for ultimate end-use by the Commonwealth of Australia Department of Defense (DOD). On March 17, 2016, Respondent disclosed that in April 2015, Respondent violated the terms of a DSP-5 license when Respondent used an unauthorized consignee with respect to the export of these 14 WASP AE DDL M2 Systems. Also, Respondent exported defense articles in furtherance of this license without filing the export in the AES system prior to export as required pursuant to 22 CFR § 123.22(b).

On April 20, 2015, Respondent disclosed that Respondent did not adequately claim certifications for technical data exports as required by 22 CFR § 125.6(b).

On October 21, 2016, Respondent disclosed that between May and July of 2016, Respondent's employees hand carried Personal Protective Equipment (PPE) to Afghanistan. Respondent failed to file electronic export information (EEI) in AES prior to export as required by 22 CFR § 123.22(b) and 123.17(f).

V. Failure to Maintain Export Records of Defense Articles

On February 13, 2015 and April 20, 2015, Respondent disclosed that Respondent did not systematically keep records related to the export of technical data in furtherance of licenses, agreements, or exemptions as required by 22 CFR §§ 122.5, 123.22, and 123.26.

RELEVANT ITAR REQUIREMENTS

The relevant period for the alleged conduct is June 5, 2014 through December 22, 2016. The regulations effective as of the relevant period are described below. Any amendments to the regulations during the relevant period are identified in a footnote.

22 CFR § 121.1 for the entire period of the alleged conduct identified the items that are defense articles, technical data, and defense services pursuant to Section 38 of the AECA.

22 CFR § 120.7 for the entire period of the alleged conduct described significant military equipment for which special export controls are warranted because of their capacity for substantial military utility or capability.

22 CFR § 122.5(a) stated that a person who is required to register must maintain records concerning the manufacture, acquisition and disposition, of defense articles; of technical data; the provision of defense services; brokering activities; and information on political contributions, fees, or commissions furnished or obtained, as required by part 130. All records must be maintained for a period of five (5) years from the expiration of the authorization or from the date of the transaction.

22 CFR § 123.5[1] for the entire period of the alleged conduct described certain requirements for temporary exports.

[1] ITAR § 123.5 was amended by 82 FR 15, Jan. 3, 2017. Those revisions do not affect the allegations in this proposed charging letter.

22 CFR § 123.22[2] for the entire period of the alleged conduct described certain requirements for filing, retention, and return of export licenses and filing of export information.

22 CFR § 127.1(a) described that is unlawful to export, import, re-export or re-transfer any defense article or technical data or to furnish any defense service for which a license or written approval is required by the ITAR without first obtaining the required license or written approval from DDTC.

22 CFR § 127.1(b)(1) described that it is unlawful to violate any of the terms or conditions of licenses or approvals granted pursuant to the ITAR.

22 CFR § 127.1(c) described that any person who is granted a license or other approval or acts pursuant to an exemption under the ITAR is responsible for the acts of employees, agents, and all authorized persons to whom possession of the licensed defense article or technical data has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article or technical data abroad. All persons abroad subject to U.S. jurisdiction who obtain custody of a defense article exported from the United States or produced under an agreement described in part 124 of the ITAR, and irrespective of the number of intermediate transfers, are bound by the regulations of the ITAR in the same manner and to the same extent as the original owner or transferor.

22 CFR § 127.2(a) described that it is unlawful to use or attempt to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service.

22 CFR § 127.2(b) described export and temporary import control documents for the purposes of 22 CFR § 127.2(a).

## CHARGES

Respondent violated 22 CFR § 127.1(a)(1) six (6) times when, without authorization, Respondent exported defense articles to Canada.

[2] ITAR § 123.22 was amended by 82 FR 15, Jan. 3, 2017, and 83 FR 50003, Oct. 4, 2018. Those revisions do not affect the allegations in this proposed charging letter.

Respondent violated 22 CFR § 127.1(a)(1) one (1) time when, without authorization, Respondent exported technical data (in the form of UAS user manuals) to customers in Australia, France, Canada, and Thailand.

Respondent violated 22 CFR § 127.1(a)(1) one (1) time when, without authorization, Respondent exported Shrike UAS to the United Kingdom.

Respondent violated 22 CFR § 127.1(b)(1) one (1) time when Respondent violated terms and conditions of authorizations on multiple occasions.

Respondent violated 22 CFR § 127.1(b)(1) one (1) time when Respondent failed to maintain proper records of temporary or permanent exports of defense articles to include technical data.

## ADMINISTRATIVE PROCEEDINGS

Pursuant to 22 CFR § 128.3(a), administrative proceedings against a respondent are instituted by means of a charging letter for the purpose of obtaining an Order imposing civil administrative sanctions. The Order issued may include an appropriate period of debarment, which shall generally be for a period of three (3) years, but in any event will continue until an application for reinstatement is submitted and approved. Civil penalties, not to exceed $ 1,163,217, per violation, may be imposed as well, in accordance with 22 U.S.C. 2778(e) and 22 CFR § 127.10.

A respondent has certain rights in such proceedings as described in 22 CFR Part 128. This is a proposed charging letter. In the event, however, that the Department serves Respondent with a charging letter, the company is advised of the following:

> You are required to answer a charging letter within 30 days after service. If you fail to answer the charging letter, your failure to answer will be taken as an admission of the truth of the charges and you may be held in default. You are entitled to an oral hearing, if a written demand for one is filed with the answer, or within seven (7) days after service of the answer. You may, if so desired, be represented by counsel of your choosing.

Additionally, in the event that the company is served with a charging letter, its answer, written demand for oral hearing (if any) and supporting evidence required by 22 CFR § 128.5(b), shall be in duplicate and mailed to the administrative law judge designated by the Department to hear the case at the following address:

USCG, Office of Administrative Law Judges G-CJ,
2100 Second Street, SW
Room 6302
Washington, DC 20593.

A copy shall be simultaneously mailed to the Acting Deputy Assistant Secretary for Defense Trade Controls:

Acting Deputy Assistant Secretary Michael Miller
US Department of State
PM/DDTC
SA-1, 12th Floor,
Washington, DC 20522-0112.

If a respondent does not demand an oral hearing, it must transmit within seven (7) days after the service of its answer, the original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue.

Please be advised also that charging letters may be amended upon reasonable notice. Furthermore, pursuant to 22 CFR § 128.11, cases may be settled through consent agreements, including after service of a proposed charging letter.

The U.S. government is free to pursue civil, administrative, and/or criminal enforcement for AECA and ITAR violations. The Department of State's decision to pursue one type of enforcement action does not preclude it, or any other department or agency, from pursuing another type of enforcement action.

Sincerely,

Michael F. Miller
Acting Deputy Assistant Secretary