PROPOSED CHARGING LETTER

Dr. Leonid B. Volfson
President & CEO
Torrey Pines Logic, Inc.
10505 Roselle St. #100
San Diego, CA 92121

Re: Alleged Violations of the Arms Export Control Act and the International Traffic in Arms Regulations by Torrey Pines Logic, Inc. and Dr. Leonid B. Volfson

Dear Dr. Volfson:

The Department of State ("Department") charges Dr. Leonid B. Volfson and Torrey Pines Logic, Inc., including its operating divisions, subsidiaries, and business units (individually and collectively "Respondents"), 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 C.F.R. parts 120-130) in connection with the attempted unauthorized export and the unauthorized export of defense articles to various countries, including proscribed destinations; the involvement in ITAR-regulated activities while ineligible; and the failure to maintain and produce export transaction records. A total of five (5) charges 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 Respondents. Please be advised that this proposed charging letter, pursuant to 22 C.F.R. § 128.3, provides notice of our intent to impose debarment or civil penalties or both in accordance with 22 C.F.R. §§ 127.7 and 127.10.

When determining the charges to pursue in this matter, the Department considered several aggravating factors, including: (a) certain violations involved unauthorized exports to the People's Republic of China (PRC) and Lebanon, proscribed destinations listed in ITAR § 126.1; (b) certain violations involved unauthorized exports to Russia, a country subject to restrictive measures on defense exports per the Department of State public announcement on April 28, 2014; (c) certain violations involved defense articles designated as Significant

Military Equipment ("SME"); (d) Respondents' repeated violations of the ITAR; (e) Respondents did not voluntarily disclose certain violations; and (f) Respondents did not obtain a license or other approval from the Department for the export of defense articles while a commodity jurisdiction ("CJ") request was pending with the Department.

The Department also considered mitigating factors when determining whether to propose charges in this matter. Most notably, Respondents: (a) submitted one voluntary disclosure, which included a third-party audit report that identified various export violations; (b) cooperated with the Department's investigation by responding to numerous requests for additional information; (c) entered into successive agreements with the Department tolling the statute of limitations period for certain violations; and (d) Respondent Dr. Volfson voluntarily waived his rights to assert a statute of limitations defense to certain claims.

This proposed charging letter describes certain alleged violations from December 24, 2014 to October 18, 2021, which is the relevant period for the proposed charges.

JURISDICTION

Dr. Leonid B. Volfson is a U.S. person within the meaning of 22 C.F.R. § 120.15 and is subject to the jurisdiction of the United States.

Torrey Pines Logic, Inc. ("TPL") is a corporation organized under the laws of California and a U.S. person within the meaning of 22 C.F.R. § 120.15; and is subject to the jurisdiction of the United States.

TPL was registered as a manufacturer and exporter with the Department of State, Directorate of Defense Trade Controls ("DDTC"), in accordance with 22 U.S.C. 2778(b) and 22 C.F.R. § 122.1 between October 9, 2009 and October 31, 2014; between March 25, 2015 and January 31, 2016; between November 15, 2016 and December 31, 2020; and between October 18, 2021 and the present.

The described violations relate to defense articles controlled under Category XII of the U.S. Munitions List ("USML"), 22 C.F.R. § 121.1, at the time the disclosed violations occurred. The relevant defense articles are all further defined as SME, requiring a DSP-83 Nontransfer and Use Certificate.

BACKGROUND

TPL is an electro-optics and communications equipment company that produces optical communications equipment and electro-optical instruments for both military and civilian application. TPL was founded by Dr. Volfson in May 2002. Dr. Volfson has served as TPL's President and sole owner since inception.

VIOLATIONS

The alleged ITAR violations addressed in this proposed charging letter are derived from multiple sources. Respondents submitted two disclosures to the Department describing certain alleged violations, the first of which appended an outside audit report. In addition, the Department issued and Respondents responded to two directed disclosures describing further alleged violations. Finally, Customs and Border Protection agents assisted the Department in identifying additional violations, and the Department independently identified other violations.

The alleged violations involve unauthorized exports of USML Category XII defense articles to Bulgaria, Canada, Estonia, Germany, Russia, Spain, Switzerland, Lebanon, and the PRC, both proscribed destinations, and the attempted unauthorized export of USML Category XII defense articles to Singapore. Certain alleged violations also involve Respondents engaging in ITAR-regulated activities while ineligible; and failing to maintain and produce export transaction records.

I. Attempted Unauthorized Export of Defense Articles – T25 and T20

On November 3, 2018, Respondents attempted to export two (2) thermal imaging systems (a TPL T25 model and a TPL T20 model), controlled under USML XII(c)(2)(i) and designated as SME, to Singapore without a license or other approval from the Department. Dr. Volfson attempted to travel on a commercial airline from an airport in Seattle, Washington to Singapore via Tokyo, Japan with the two thermal imaging systems in his carry-on luggage.

At the Seattle airport, Customs and Border Protection (CBP) agents asked Dr. Volfson for the requisite authorization to export the thermal imaging systems to Singapore. Dr. Volfson failed to produce the required license or other approval for the export of thermal imaging systems to Singapore. Consequently, CBP seized the thermal imaging systems.

DDTC's records confirmed that DDTC did not authorize Respondents to export the thermal imaging systems to Singapore with a license or other written approval.

Subsequently, Respondents challenged the Department's jurisdiction over the TPL T25 model thermal imaging system. Respondents claim that they were trying to relocate to Singapore the manufacturing of the Chinese-made component parts and claim that Dr. Volfson had a good faith belief that the two thermal imaging systems were not ITAR-controlled. On December 23, 2019, per request from DDTC dated November 13, 2019, Respondents submitted a CJ (CJ0003003) for this system, and on August 20, 2020, DDTC determined that it was ITAR-controlled. Respondents appealed the CJ determination on September 7, 2020. On January 15, 2021, DDTC upheld the determination, finding that the TPL T25 model thermal imaging system is specially designed to mount to a weapon and therefore described by USML Category XII(c)(2)(i) and designated as SME.

II. Unauthorized Exports of Defense Articles – T10

In early 2015, Respondents launched the T10 family of small form-factor thermal imagers. According to Respondents, the imagers integrated both Picatinny rail mounts, a standard mounting system for firearms that allows sights, grips, and other accessories to be quickly and securely fastened to firearms, and non-Picatinny mounts. Respondents' marketing brochure for the series described three T10 models: the T10-S (80x60 pixel resolution, 50° Field-of-View (FOV), 9Hz video), T10-N (80x60 pixel resolution, 25° FOV, 9Hz video), and the T10-M (80x60 pixel resolution, 50° FOV, 30 Hz video). The brochure also notes that the "9Hz units are ideal for hunters," "the 30Hz units support more sophisticated domestic user needs," and the "[w]ide angle units augment law enforcement agency capabilities conducting search operations." Respondents' brochure prominently features graphics of T10 units attached to various firearms.

On January 27, 2015, TPL's sister company, FOMS, Inc. (FOMS), submitted a written request to the Department of Commerce for a commodity classification of the T10. On March 13, 2015, the Department of Commerce responded to FOMS with the determination that the T10-M was classified as Export Classification Control Number (ECCN) 0A987. Between February 27, 2015 and April 7, 2015, Respondents exported various T10 units, including the T10-S, T10-N, and what appeared to be T10-Ms to various customers in Germany,

Switzerland, the Netherlands, France, Malaysia, Canada, Hong Kong, and Austria without authorization.

In mid-April 2015, Respondents applied to the Department of Commerce for an export license for 20 T10-M units to a Swiss company. Respondents claim they had a good faith belief that the T10 series, including the T10-M, was not ITAR-controlled, particularly those with non-picatinny mounts. On April 17, 2015, the Department of Commerce returned the application without action because the units appeared to be subject to the ITAR and encouraged Respondents to apply for an export license or request a CJ from DDTC.

On April 19, 2015, Respondents submitted a DS-4076 form to DDTC for the T10-M, but also stating in its transmittal letter that "[t]his CJ request is addressing T10-M (30Hz version) product but generically covers T10-S, T10-N (9 Hz versions that use the same technology)." The CJ process, described in 22 C.F.R. § 120.4, is used "if doubt exists" regarding whether an article or service is covered by the USML. In response to the question on the CJ form, "Has this commodity been previously exported?" Respondents answered, "Unknown." Respondents claim that they answered "Unknown" because they had insufficient documentation to determine what T10 models had been exported.

According to Respondents, they did not consider the T10-M to be ITAR-controlled until April 2015 because they relied upon the Commerce Department's March 13, 2015 commodity classification determination that the T10-M was classified as 0A987. Respondents took the position that the T10-M should not be ITAR-controlled, but, as of April 17, 2015, they began handling the T10-M as ITAR-controlled until the Department made a final determination on Respondents' CJ request on this item. On August 1, 2016, the Department provided Respondents with a CJ determination (CJ-0225-15) finding that the entire T10 series (not just the T10-M) was subject to the ITAR and designated as a defense article under USML XII(c) and designated as SME.

Despite the above-described facts, Respondents' disclosure included invoices from April 20, 2015 to November 30, 2015, while the CJ was pending, demonstrating that Respondents without authorization exported 13 shipments of T10 units to Bulgaria, Canada, Estonia, Germany, Lebanon, Russia, Spain, Switzerland, and the PRC. Both Lebanon and the PRC are proscribed destinations.

III. Involvement in ITAR-Regulated Activities while Generally Ineligible and Not Registered

In August 2013, the Department of the Navy Suspending and Debarring Official administratively suspended Respondents from government contracting. Respondents received a copy of the notice of suspension on August 29, 2013. The System for Award Management (SAM), a publicly available website, shows that Respondents were excluded from government contracting between August 29, 2013 and February 27, 2015.

During that period, in accordance with 22 C.F.R. § 120.1(c)(2), Respondents were generally ineligible to engage in activities regulated under the ITAR. Respondents, in a letter to the Department dated February 28, 2015, acknowledged their suspension, notified the Department that the suspension was lifted on February 27, 2015, and asked how they "can be re-instated" with the Department. During a portion of the suspension period, between October 31, 2014, and March 25, 2015, TPL was also not registered with DDTC.

Despite being generally ineligible to engage in activities regulated under the ITAR and not being registered, Respondents disclosed that they violated the ITAR by conducting ITAR-controlled activities during the relevant time period, including by manufacturing and supporting the export of the S30 Sentinel to Japan and Thailand.

a. Manufacturing of Defense Articles while Ineligible and Not Registered

Respondents disclosed that during the time period that they were suspended and not registered, they performed manufacturing work on at least one S30 Sentinel for Sojitz-US, located in Los Angeles, California, for ultimate delivery to Sojitz Aerospace Corporation ("Sojitz-Japan") in Tokyo, Japan. In addition, Respondents further disclosed that despite not being registered with the Department from January 1 to October 18, 2021, TPL continued to manufacture defense articles during this time period.

b. Involvement in ITAR-Controlled Transaction While Ineligible

In January 2009, Dr. Volfson founded a company called FOMS. According to Respondents, Dr. Volfson ceased having any management responsibility for FOMS in August 2013. Respondents allege that since August 2013, Ms. Ella Volfson, Dr. Volfson's wife, has been FOMS' sole officer and director, with "Dr.

Volfson limiting his involvement to advising and offering opinions and technical support on FOMS projects and concepts." According to DDTC records, FOMS registered with DDTC as a manufacturer and exporter between February 20, 2014 and February 28, 2018.

TPL and FOMS are closely linked, with Respondents describing FOMS as TPL's "sister company" in submissions to the Department. The companies share, or have shared, personnel, including Dr. Volfson and Ms. Volfson, the latter of whom is described by Respondents as being TPL's Controller and handling "accounting, purchasing, and other administrative details for TPL" and being "responsible for all aspects of export compliance, including export licensing, export shipping activities, and other daily export operations." Additionally, a third-party audit of TPL's export compliance in 2016 found that FOMS both rents office space from TPL and resells some TPL products.

According to Respondents, the two companies also cooperated on projects for customers, including one project involving an export of defense articles to Thailand. In September 2014, during Respondents' period of ineligibility, FOMS received an inquiry from Million Point Co., Ltd in Bangkok, Thailand ("Million Point"), for two S30 Sentinels for end-use by the Naval Ordnance Department Royal Thai Navy ("Royal Thai Navy"). In November 2014, Million Point issued a purchase order to FOMS for two S30 Sentinels with accessories. Shortly after receiving this order, FOMS inquired with TPL whether it had two S30 Sentinels available. At that time, TPL did have two S30s in stock that were manufactured in 2011, but the equipment was not complete. The two units had not been kitted with the accessories requested by Million Point, nor had the units been fully tested. Based on this information, FOMS understood that the equipment would require additional work prior to shipping to Million Point.

Respondents disclosed that FOMS and TPL were cautious to move forward with the export transaction during this time because Respondents were ineligible to export. Therefore, FOMS decided that it would not procure or ship the S30 Sentinels until March 2015, assuming that Respondents would no longer be ineligible by that time. However, during Respondents' period of ineligibility, on January 9, 2015, FOMS submitted a license application to export TPL's S30 Sentinel for end use by the Royal Thai Navy. Although Respondents claim that they completed the modification work on the items, prepared the items for export to Thailand, and accepted payment from FOMS for the items to be exported in March 2015, after their suspension was lifted, Respondents participated in certain aspects of the transaction during their period of general ineligibility.

IV. Unauthorized Exports of Defense Articles – S30

On July 20, 2014, DDTC provided Respondents with a CJ determination (CJ-0301-14) finding that the S30 Sentinel, a hand-held device designed to detect optical systems pointed at the viewer, was regulated as a defense article under USML Category XII(b) and designated as SME. Despite having received this CJ determination, Respondents, without authorization, exported S30 Sentinel imaging systems to Japan. Specifically, documentation appears to show that Respondents exported the S30 to Japan on December 24, 2014, January 27, 2015, and March 4, 2015. Similarly, documentation appears to show that Respondents again, without authorization, exported S30 Sentinels to Japan on April 3 and May 5, 2015.

Respondents disclosed to DDTC that the S30 Sentinels were sent to Sojitz USA in Los Angeles after completion of warranty repairs for export by Sojitz USA to an end-user in Japan. However, Respondents' invoices and shipping documents that the Department separately obtained appear to show direct shipments from TPL in San Diego, California to Sojitz in Tokyo, Japan.

V. Failure to Maintain and Produce Export Transaction Records

Respondents disclosed that TPL did not maintain and produce records as required by 22 C.F.R. § 122.5. This hindered the Department's review of Respondents' compliance with the ITAR and limited the Department's ability to assess any potential harm to U.S. national security and foreign policy arising from Respondents' alleged violations.

Respondents' external audit report, dated February 12, 2016, concluded that: "Records were available for inspection upon request by the auditor and were legible. However, not all records are being kept in accordance with § 122.5 and § 123.26. Records are not being returned to TPL by their freight forwarder as required in the TPL Export Compliance Manual. No export license log is being maintained by TPL. The Company is not keeping any records of technical data exports. The Company uses serial numbers yet is not able to tie its own serial numbers to product details (i.e., TPL cannot determine whether S/N 50605037 is a T10-M or other variant of the T10)."

Respondents also disclosed to DDTC that the auditor's assessment of Respondents' recordkeeping is accurate and that Respondents had not properly maintained records in accordance with ITAR § 122.5.

RELEVANT ITAR REQUIREMENTS

The relevant period for the alleged conduct is December 24, 2014 through October 18, 2021. The regulations effective as of the relevant period are described below.

Part 120 of the ITAR describes general authorities pursuant to Section 38 of the AECA and provides definitions.

Section 120.1(c)(2) provides that persons who have been convicted of violating the U.S. criminal statutes enumerated in 22 C.F.R. §120.27, who have been debarred pursuant to part 127 or 128 of this subchapter, who are subject to indictment or are otherwise charged (e.g., charged by criminal information in lieu of indictment) with violating the U.S. criminal statutes enumerated in 22 C.F.R. § 120.27, who are ineligible to contract with or to receive a license or other form of authorization to import defense articles or defense services from any agency of the U.S. Government, who are ineligible to receive an export license or other approval from any other agency of the U.S. Government, or who are subject to a Department of State policy of denial, suspension, or revocation under § 126.7(a) of this subchapter, are generally ineligible to be involved in activities regulated under the subchapter.

Part 121 of the ITAR identifies the items that are defense articles, technical data, and defense services pursuant to Section 38 of the AECA.

Section 122.1 of the ITAR provides that any person who engages in the United States in the business of manufacturing or exporting or temporarily importing defense articles, or furnishing defense services, is required to register with the Directorate of Defense Trade Controls.

Section 122.5 of the ITAR describes the maintenance and provision of records requirements for registrants.

Section 123.1(a) of the ITAR provides that any person who intends to export or to import temporarily a defense article must obtain the approval of the DDTC prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter.

Section 126.1(a) of the ITAR provides that it is the policy of the United States to deny, among other things, licenses and other approvals for exports and imports of defense articles and defense services, destined for or originating in certain countries, including Lebanon and the PRC.

Section 127.1(a)(1) of the ITAR provides that is unlawful to export or attempt to export from the United States, 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.

Section 127.1(b)(1) provides that it is unlawful to violate any of the terms or conditions of a license or approval granted pursuant to this subchapter, any exemption contained in this subchapter, or any rule or regulation contained in this subchapter.

Section 127.1(d) of the ITAR provides that a person who is ineligible pursuant to 22 C.F.R. § 120.1(c)(2), or a person with knowledge that another person is ineligible pursuant to 22 C.F.R. § 120.1(c)(2), may not, directly or indirectly, in any manner or capacity, without prior disclosure of the facts to and written authorization from DDTC: (1) apply for, obtain, or use any export control document for such ineligible person, or (2) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate in any manner in any transaction subject to the ITAR that may involve any defense article where such ineligible person may obtain any benefit therefrom or have any direct or indirect interest therein.

PROPOSED CHARGES

Charge 1: Attempted Unauthorized Export of Defense Articles

Respondents violated 22 C.F.R. § 127.1(a)(1) one time when they, without authorization, attempted to export two thermal imaging systems (T25 and T20) controlled at the time of export under USML Category XII(c)(2)(i) and designated as SME to Singapore.

Charge 2: Unauthorized Exports of Defense Articles

Respondents violated 22 C.F.R. § 127.1(a)(1) one time when they, without authorization, exported 13 shipments of T10 thermal imaging units controlled

under USML Category XII(c) and designated as SME to Bulgaria, Germany, Switzerland, Lebanon (a proscribed destination under 22 C.F.R. § 126.1), Canada, the PRC (a proscribed destination under 22 C.F.R. § 126.1), Spain, Estonia, and Russia (a country subject to restrictive measures on defense exports pursuant to the Department of State public announcement on April 28, 2014).

Charge 3: Unauthorized Exports of Defense Articles

Respondents violated 22 C.F.R. § 127.1(a)(1) one time when they, without authorization, exported five shipments of S30 Sentinel optical detection units controlled under USML Category XII(b) and designated as SME to Japan.

Charge 4: Involvement in ITAR-Regulated Activities While Generally Ineligible

Respondents violated 22 C.F.R. § 127.1(d)(2) one time by performing manufacturing work on at least one defense article (S30 Sentinel, USML Category XII(b) and designated as SME) for export to a foreign customer while generally ineligible under 22 C.F.R. § 120.1(c)(2) and by participating in a transaction involving the export of two S30 Sentinels to Thailand.

Charge 5: Failure to Maintain and Produce Export Transaction Records

Respondents violated 22 C.F.R. § 127.1(b)(1) one time when they failed to maintain and produce export transaction records as required under 22 C.F.R. § 122.5(a).

ADMINISTRATIVE PROCEEDINGS

Pursuant to 22 C.F.R. § 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 years, but in any event will continue until an application for reinstatement is submitted and approved. Civil penalties, not to exceed $1,272,251, per violation of 22 U.S.C. § 2778, may be imposed as well, in accordance with 22 U.S.C. § 2778(e) and 22 C.F.R. § 127.10.

A respondent has certain rights in such proceedings as described in 22 C.F.R. 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 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 C.F.R. § 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 Deputy Assistant Secretary for Defense Trade Controls:

Deputy Assistant Secretary Michael Miller
U.S. 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 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 C.F.R. § 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
Deputy Assistant Secretary
Bureau of Political-Military Affairs