PROPOSED CHARGING LETTER

Mr. Ron Nersesian
President & CEO
Keysight Technologies, Inc.
1400 Fountaingrove Parkway
Santa Rosa, CA 95403

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

Dear Mr. Nersesian:

The Department of State ("Department") charges Keysight Technologies, Inc., including its operating divisions, subsidiaries, and business units (collectively "Keysight" or "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 C.F.R. parts 120-130) in connection with unauthorized exports of technical data, to include software, to various countries, including a proscribed destination. A total of 24 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 Respondent. 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 harmed U.S. national security; (b) certain violations involved unauthorized exports to a proscribed destination listed in ITAR § 126.1; (c) 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; (d) the Department alerted Respondent of misclassification concerns, which led to the discovery of ITAR violations; and (e) Respondent continued to export

the technical data, to include software, as EAR99 while the commodity jurisdiction ("CJ") request was pending with the Department.

The Department also considered mitigating factors. Most notably: (a) Respondent cooperated with the Department's review of the potential violations, including by submitting one disclosure that acknowledged the charged conduct after the Department alerted Respondent of misclassification concerns; (b) Respondent implemented remedial compliance measures intended to detect, deter, and prevent future similar violations; and (c) Respondent cooperated with the Department and entered into an agreement with the Directorate of Defense Trade Controls ("DDTC") tolling the statutory period that applies to enforcement of the AECA and the ITAR.

This proposed charging letter describes certain alleged violations for the time period from December 5, 2015 to April 18, 2018.

JURISDICTION

Respondent is a corporation organized under the laws of Delaware and a U.S. person within the meaning of section 120.15 of the ITAR. Respondent is subject to the jurisdiction of the United States.

During the period covered by the violations set forth herein, Respondent was engaged in the manufacture and export of defense articles and was registered with DDTC as a manufacturer and exporter, in accordance with section 38 of the AECA and section 122.1 of the ITAR.

The described violations relate to software controlled under Category XI(d) of the United States Munitions List ("USML"), section 121.1 of the ITAR, at the time the violations occurred.

BACKGROUND

Respondent designs and manufactures electronic test and measurement equipment and software for use in the commercial, government, and defense sectors. Respondent engages in both domestic and foreign sales.

VIOLATIONS

The ITAR violations addressed in this proposed charging letter were identified after the Department alerted Respondent of misclassification concerns. Subsequently, Respondent submitted one disclosure to the Department describing alleged violations. The violations involved unauthorized exports of technical data, including software, to Australia, Canada, Czech Republic, France, Germany, India, Israel, Japan, Russia, Singapore, South Korea, Spain, Switzerland, Taiwan, Turkey, the United Kingdom, and the PRC, a proscribed destination.

Unauthorized Exports of Technical Data, Including Software, to Multiple Countries

On November 9, 2017, the Office of Defense Trade Controls Policy ("DTCP") raised concern over Respondent's potential misclassification of its Signal Studio for Multi-Emitter Scenario Generation software ("MESG software") and recommended Respondent submit a CJ to determine the jurisdiction of the software. The MESG software can be used with certain hardware equipment to model and simulate multi-emitter electronic warfare threat scenarios for testing radar equipment on fixed or mobile platforms.

Between 2015 and 2018, Respondent exported the MESG software as both trial and full versions of the software. Respondent exported full versions of the software installed on hardware or electronically. Further, Respondent exported trial versions of the software via downloads from their website.

In response to DTCP's recommendation, Respondent submitted CJ-0005-18 on January 4, 2018. On April 27, 2018, DDTC provided Respondent with a determination that the MESG software was controlled under USML Category XI(d) on the basis of the software's direct relation to electronic warfare test sets described by USML Category XI(a)(11).

Between the dates of January 9, 2018 and April 18, 2018, while CJ-0005-18 was under review, Respondent exported without authorization the MESG software on eight separate occasions to the PRC, Russia, Japan, Israel, and Canada. Respondent claims that these exports were based on a good faith but misguided belief that the MESG software was not subject to ITAR controls and once Respondent learned of DDTC's formal CJ determination, it stopped any further unlicensed exports of MESG software and treated MESG software as ITAR controlled.

On May 21, 2018, Respondent submitted an initial disclosure assigned DTCC case number 18-0000493. Subsequently, on July 24, 2018, Respondent submitted its full disclosure in which it disclosed unauthorized exports to multiple countries of its MESG software, as described above. Respondent's disclosure stated the exports of the MESG software were conducted pursuant to the Export Administration Regulations (EAR), under Export Control Classification Number (ECCN) EAR99.

Respondent believed the ITAR jurisdiction was in error, and on August 30, 2018, Respondent appealed CJ-0005-18 by submitting a reconsideration request in accordance with ITAR § 120.4(g), which was assigned CJ-0391-18. On February 13, 2019, DDTC provided Respondent with the determination of CJ-0391-18, reaffirming the determination of CJ-0005-18. DDTC maintained that the MESG software was controlled under USML Category XI(d) on the basis of the software's direct relation to electronic warfare test sets described by USML Category XI(a)(11).

Following Respondent's submission of its full disclosure, the U.S. Government reviewed the above-described activities and assessed that Keysight's exports to the PRC and Russia harmed U.S. national security.

RELEVANT ITAR REQUIREMENTS

The relevant period for the alleged conduct is December 5, 2015 through April 18, 2018. 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.

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 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 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.

CHARGES

Respondent violated section 127.1(a)(1) of the ITAR 24 times when Respondent, without authorization, exported technical data, to include software, controlled under USML Category XI(d) to Australia, Canada, Czech Republic, France, Germany, India, Israel, Japan, the PRC, Russia, Singapore, South Korea, Spain, Switzerland, Taiwan, Turkey, and the United Kingdom. 13 of the 24 charges involve unauthorized exports to the PRC, a proscribed destination pursuant to section 126.1 of the ITAR. 2 of the 24 charges involve unauthorized exports to Russia, a country subject to restrictive measures on defense exports pursuant to the Department of State public announcement on April 28, 2014.

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 (3) years, but in any event will continue until an application for reinstatement is submitted and approved. Civil penalties, not to exceed $1,197,728, 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 (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 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 (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 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