PROPOSED CHARGING LETTER

Mr. William M. Brown
Chairman & CEO
L3Harris Technologies, Inc.
1025 W. NASA Boulevard
Melbourne, FL 32919

Re: Alleged Violations of the Arms Export Control Act and the International Traffic in Arms Regulations by L3Harris Technologies, Inc.

Dear Mr. Brown:

The Department of State ("Department") proposes to charge L3Harris Technologies, Inc. for activities conducted by Harris Corporation ("Harris") prior to its recent merger, including its operating divisions, subsidiaries, and business units ("Respondent" or "L3Harris") 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 unauthorized exports of defense articles; and violations of the terms and conditions of agreements and licenses. A total of one hundred thirty-one (131) 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 until settlement is reached, including through incorporation of 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 civil penalties in accordance with 22 CFR § 127.10.

The Department discovered alleged violations through both directed and voluntary disclosures. The Defense Technology Security Administration (DTSA) initially brought concerns to the Department's attention in 2015 via a referral, resulting in a directed disclosure from the Department to Respondent. The Department's investigation into DTSA's concerns resulted in Respondent submitting three (3) additional disclosure cases. While the Department considers these disclosures voluntary, the violations alleged in these disclosures are directly related to the directed disclosure matter. Therefore, the voluntary nature of these

three disclosures will not be considered a mitigating factor pursuant to 22 CFR § 127.12(b)(3). Respondent submitted seven (7) voluntary disclosures unrelated to the initial directed disclosure, and therefore the Department considered this mitigating factor with respect to the unrelated violations.

When determining the charges to pursue in this matter, the Department considered a number of mitigating factors. Most notably, Respondent: (a) as previously stated, submitted seven (7) voluntary disclosures pursuant to 22 CFR § 127.12 that disclosed a portion of the charged conduct and other potential ITAR violations and (b) instituted a number of self-initiated compliance program improvements during the course of the Department's review.

The Department also considered countervailing factors including: (a) DTSA initially referred a portion of the charged conduct to the Department, resulting in a directed disclosure to Respondent; (b) a portion of the charged conduct resulted from Respondent not properly understanding its compliance obligations and exporting without obtaining further clarification from the government of such obligations, which lead to ITAR violations; (c) systemic administrative violations; and (d) frequency and repetitive nature of the same violations.

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

## 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 manufacturer and exporter with the Directorate of Defense Trade Controls (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 IV, 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 significant military equipment (SME), requiring a DSP-83 Nontransfer and Use Certificate.

## BACKGROUND

Respondent produces wireless equipment, tactical radios, electronic systems, night vision equipment, and both terrestrial and space-borne antennas for use in the government, defense, and commercial sectors. In June 2018, Respondent reported customers in over 100 countries. Respondent relies heavily on international sales, reporting that 21 percent of its FY 2018 revenue came from products and services exported from the U.S., including foreign military sales or rendered abroad.

## VIOLATIONS

ITAR violations included in this proposed charging letter are derived from Respondent's responses to a directed disclosure initiated by the Department, as well as subsequent voluntary disclosures, both related and unrelated to the circumstances of the directed disclosure, for which the Department opened additional cases. This proposed charging letter addresses violations from ten (10) disclosures.

### I. Unauthorized Exports of Technical Data in the form of Software

Respondent exports tactical radios including radios described in Category XI of the USML that are SME. The capabilities of these tactical radios vary based on the radio's waveform mode. Harris' Adaptive Networking Wideband Waveform (ANW2) designator identifies its proprietary Mobile Ad-Hoc Networking ("MANET") waveform. As MANET technology evolved, Harris introduced new versions of the ANW2 waveform that incorporated emerging capabilities and advancements. Harris introduced the third ANW2 version, known as ANW2C, in June 2013. The new ANW2C version incorporated several enhancements considered to alter the capability of the original ANW2 waveform, including the use of Dynamic Channel Allocation technology, not present in previous versions.

The Department determined that both ANW2 and ANW2C waveform modes are controlled under Category XI(d) of the ITAR as technical data in the form of software. However, because of the increased capabilities of the ANW2C waveform mode, beginning in October 2014, DTSA recommended the ANW2C for export only to North Atlantic Treaty Organization ("NATO") allies, as well as Australia and New Zealand, as stated in license provisos.

Between 2013 and March 2015, Respondent engaged with the Defense Advanced Research Projects Agency (DARPA), DTSA, and DDTC on multiple occasions to discuss the ANW2C waveform mode, with the USG providing guidance that ANW2C provided several additional capabilities than the ANW2 waveform. The USG also indicated that the ANW2C software appears to use certain technology not present in the ANW2, suggesting that the two are substantially different implementations. Additionally, between October 29, 2014 and April 27, 2015, Respondent received provisos on at least fifteen (15) hardware licenses for tactical radios that explicitly prohibited the export of the ANW2C waveform mode.

On November 13, 2014, DTSA informed Respondent that DTSA would only recommend the export of ANW2C to NATO countries, Australia, and New Zealand. In February 2015, DDTC met with Respondent regarding a request to allow the export of ANW2C waveform to Brazil. Respondent's export license for, *inter alia*, tactical radios included a proviso stating: "ANW2C and ANW2-30 mode waveforms MUST NOT be exported." Respondent requested a reconsideration of this restriction to allow Respondent to fulfill an existing contract. At this time, DDTC reviewed the capabilities of the ANW2C with Respondent, and determined that its capabilities were different from the authorized ANW2. DDTC ultimately removed the proviso restricting exports of the ANW2C, which allowed Respondent to export a fixed number of ANW2C waveform-enabled radios to Brazil. The revised license did not authorize Respondent to export the ANW2C waveform to update any radios previously exported to Brazil or elsewhere. DDTC also added a limiting proviso reaffirming the Department's determination that future exports must identify the precise waveform mode of the radio that will be exported. Also, the proviso directed Respondent to obtain new licenses if past licenses did not properly identify the waveform mode and clarified that removing the proviso on one license should not be extend to any other license.

Responded disclosed that despite this guidance, as a result of being inconsistent in the application of the provisos, between March and July 2015, Respondent's after-market support system permitted Respondent's previously licensed customers to obtain without authorization the export of defense articles in the form of downloadable firmware updates to various customers in both NATO and non-NATO countries. This allowed customers to update previously exported radios to ANW2C, which provided them with enhanced capabilities.

In disclosing these exports, Respondent stated the exports were authorized by ITAR § 125.4(b)(4). However, pursuant to ITAR § 125.4(b)(4), copies of technical data previously authorized for export to the same recipient are exempt from the licensing requirement "if the revisions are solely editorial and do not add to the content of technology previously exported". As early as February 2013, Respondent represented that the latest ANW2C software version offered "increased data capacity" resulting in "a dramatic increase in user throughput" but did not believe at the time that these capabilities rose to the level of technical changes that required additional ITAR approvals. Respondent has since that time concurred that additional ITAR approvals were necessary.

II. Unauthorized Exports of Tactical Radios

As of March 2015 discussions regarding the Brazil license, Respondent was aware that DDTC considered the ANW2C waveform mode to be a different commodity from ANW2. DDTC further clarified that it viewed the precise waveform mode as relevant to the export-licensing decision by adding a proviso to DSP-5 License #050548408 to state:

> "All future radio exports should specifically identify the precise waveform mode that the radio is being exported with. Past export radio license approval for radios which do not properly identify the waveform mode which was originally authorized for export with the radio, should be the subject of a new license application."

On March 8, 2016, Respondent submitted a voluntary disclosure related to the unauthorized export of tactical radios equipped with the ANW2C waveform to Australia, Italy, New Zealand, and the United Kingdom ("UK").

On September 11, 2017, Respondent also submitted a voluntary disclosure to report the unauthorized export of one tactical radio equipped with the ANW2C waveform to Australia. As described in the disclosure, in September 2016, Harris' Tactical Communications ("TACOM") business team traveled to Australia to demonstrate the Harris Integrated Soldier System ("ISS"), which includes a radio component. Respondent provided ISS demonstrations in Adelaide, Australia, and also provided a private demonstration to the Australian Department of Defence ("DOD") in Canberra. Respondent used the same ISS suite of hardware in both demonstrations, which contained a radio equipped with the ANW2C waveform

mode. One of the licenses supporting these exports contained a proviso specifically restricting the export of the ANW2C waveform.

In addition, Respondent reported unauthorized exports of tactical radios to Australia and the UK.

III. Unauthorized Exports of Military Electronics to Canada

On September 18, 2018, Respondent disclosed that between April 2014 and December 2017, on multiple occasions Respondent without authorization exported various military electronics controlled under USML Category XI to Canada. Respondent stated that these exports would have been authorized under the exemption in ITAR § 126.5(b) had the proper shipping paperwork been prepared and filed. However, Respondent failed to file EEI filing at the time of the export, as required by ITAR § 123.22, and did not provide any documentation showing any attempted use of the § 126.5(b) exemption.

IV. Unauthorized Exports of the T7 Remote Controlled Vehicle ("T7 RCV"), the AN/PLM-4 Radar Signal Simulator ("PLM-4"), and Jagwire Software Plugin

On January 22, 2019, Respondent disclosed that between August and November of 2016, Respondent temporarily exported without authorization the T7 Remote Control Vehicle ("T7 RCV") to Thailand, Singapore, and Germany. Respondent incorrectly self-classified the T7 RCV as Export Administration Regulations (EAR) controlled. In May 2017, while Respondent was negotiating its first commercial sale of the T7 RCV, Respondent submitted a commodity jurisdiction (CJ) determination request and received guidance that a T7 RCV equipped with Explosive Ordnance Disposal (EOD) capability is controlled by the ITAR in Category IV(c). In the instances cited above, the T7 RCV model shipped had the EOD capability installed.

Between September 2015 and July 2016, Respondent temporarily exported without authorization the AN/PLM-4 Radar Signal Simulator ("PLM-4") to Italy on two (2) occasions and to Taiwan once. In all these instances, Respondent incorrectly self-classified the PLM-4 as EAR controlled and exported the items incorrectly citing EAR exceptions.

Between November 2014 and May 2016, Respondent temporarily exported without authorization the Jagwire Software Plug-In to twelve (12) different

countries. Respondent received a final CJ determination stating that the Jagwire software is EAR controlled with an Export Control Classification Number ("ECCN") of 5D002. The Jagwire Software Plug-in provides additional capabilities for the EOD beyond the basic Jagwire software and, pursuant to a CJ determination, is ITAR controlled. Respondent disclosed that the violations occurred because it failed to differentiate between ITAR controlled plug in and non-ITAR controlled software when Respondent provided ISS demonstrations.

V. Unauthorized Exports of Technical Data Related to Night Vision Equipment and Tactical Radios

On September 20, 2018, Respondent disclosed that on April 3, 2018, Respondent exported without authorization Category XII(f) technical data involving night vision equipment to a law firm in Canada. Respondent also disclosed that separately, on June 18, 2018, Respondent exported without authorization Category XI(d) technical data involving tactical radios to Sky-Watch in Denmark.

VI. Providing a False Part 130 Statement on a Technical Assistance Agreement

On January 22, 2019, Respondent disclosed that on May 25, 2017, Respondent misrepresented facts on a technical assistance agreement (TAA) by providing an inaccurate Part 130 response. On its TAA application, Respondent stated, "The applicant or its vendors have not paid, nor offered, nor agreed to pay, in respect of any sale for which a license or approval is requested, political contributions, fees or commissions in amounts as specified in 22 CFR 130.9(a)." Respondent later submitted a revised Part 130 letter disclosing that a commission in an amount that required reporting had been promised to an international marketing representative for facilitating the agreement subject to a covered TAA.

VII. Violation of License Provisos

In response to an inquiry from DDTC, Respondent audited all licenses with a provisos related to notification to DDTC of exports and submitted a disclosure on June 21, 2017, which identified that between June 2014 and March 2017, Respondent violated the provisos of eight (8) licenses.

The violated provisos required Respondent to notify DDTC within five (5) days of any export shipped against the license. Respondent disclosed that it exported against multiple separate licenses and either did not report the export or

failed to report the export within the required five-day window. Additionally, on three (3) of the instances where Respondent untimely filed, Respondent also failed to provide serial numbers of the exported hardware as required by additional provisos on those licenses. The requirement to provide serial numbers also appeared in multiple instances in which the exports were not reported at all.

VIII. Violation of the Terms or Conditions of Licenses and Agreements

On January 22, 2019, Respondent disclosed that it violated the terms or conditions of TAAs and manufacturing licensing agreements (MLAs). Violations include failures to file initial exports; failures to file signed, concluded agreements; failures to file annual status notifications; failures to notify DDTC of agreements not concluded; failures to file a written statement accompanying concluded agreements; and failures to file annual sales reports.

IX. Violations Caused by Systemic Administrative Issues

Respondent submitted multiple voluntary disclosures related to the management of DSP-73 licenses.

In November 2015, Respondent's shipper failed to properly present a DSP-73 license for endorsement by Customs and Border Protection ("CBP") in accordance with § 123.22. Instead of using approved DSP-73 licenses, the shipper cited the § 123.4(a)(1) exemption.

Between 2014 and 2016, Respondent failed to comply with the terms of a DSP-73 license on multiple occasions by losing defense articles, including radio accessories such as cables, adapters, batteries, etc., overseas, resulting in an inability to return them to the U.S. as required by the license. These violations occurred in the UK, Australia, and Estonia. Respondent implemented inadequate inventory management processes which resulted in the losses.

Between 2014 and 2018, Respondent regularly failed to endorse properly the export and import of defense articles authorized under DSP-73 licenses by the Customs and Border Protection (CBP) in accordance with § 123.22. In these cases, Respondent presented incorrect information or the wrong license numbers to CBP or presented no license at all.

In December 2015 and April 2018, Respondent misrepresented facts on import and export paperwork by listing incorrect values for items and listing an

incorrect number of items being exported and returned to the United States against DSP-73 licenses.

In October 2017 Respondent failed to comply with the terms of a DSP-73 license. Respondent failed to return fifteen (15) tactical radios from Denmark before the expiration of the DSP-73.

In September 2018, Respondent failed to maintain records associated with a DSP-73 license, and therefore is currently incapable of confirming that it was properly endorsed by CBP as required.

## RELEVANT ITAR REQUIREMENTS

The relevant period for the alleged conduct is April 23, 2014 through June 18, 2018. The regulations effective as of the 2014 Code of Federal Regulations are described below. Any amendments to the regulations during the relevant period are identified in footnotes.

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 subject to the section 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 for the entire period of the alleged conduct described certain requirements for temporary export licenses[1].

[1] Amended 82 FR 15, Jan. 3, 2017

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

22 CFR § 124.1 for the entire period of the alleged conduct described certain TAA and MLA requirements.

22 CFR § 124.4(a) for the entire period of the alleged conduct described requirements to file signed TAA and MLA agreements with DDTC and to file annual status notifications with DDTC.

22 CFR § 124.4(b) for the entire period of the alleged conduct described requirements to file a written statement accompanying concluded MLA agreements.

22 CFR § 124.5 for the entire period of the alleged conduct described requirements to notify DDTC of agreements not concluded.

22 CFR § 124.9(a)(5) for the entire period of the alleged conduct described requirements to include in MLAs a clause requiring that annual sales reports will be provided to the Department of State[3].

22 CFR § 127.1(a) described that without first obtaining the required license or other written approval from the Directorate of Defense Trade Controls, it is unlawful to export, import, reexport or retransfer any defense article or technical data or to furnish any defense service for which a license or written approval is required by the ITAR.

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) stated that any person who is granted a license or other approval or acts pursuant to an exemption under this subchapter is responsible for the acts of employees, agents, brokers, and all authorized persons to whom possession of the defense article, which includes technical data, has been entrusted regarding the operation, use, possession, transportation, and handling of such defense article abroad.

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[2] Amended 83 FR 50003, Oct. 4, 2018
[3] Amended 81 FR 54732, Aug, 17, 2016

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.

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

22 CFR § 130.9 described that applicants must inform DDTC as to whether the applicant or its vendors have paid or offered or agreed to pay fees or commissions in respect of any sale for which a license or approval is requested.[4]

22 CFR § 130.10 for the entire period of the alleged conduct described that persons required under 22 CFR § 130.9 to furnish information must furnish the information described in 22 CFR § 130.10 to DDTC

## CHARGES

Respondent violated 22 CFR § 127.1(a)(1) on forty-four (44) occasions when it exported without authorization technical data (in the form of software) controlled under USML Category XI(d) to Australia, Brazil, Canada, Estonia, France, Germany, and Poland for which a license or written approval was required based on its improper reliance on licenses issued for ANW2 technology rather than ANW2C technology.

Respondent violated 22 CFR § 127.1(a)(1) on forty-six (46) occasions when it exported without authorization defense articles (tactical radios) controlled under USML Category XI(b), SME, to Australia, Italy, New Zealand, and the United Kingdom for which a license or written approval was required based on its improper reliance on licenses issued for ANW2 technology rather than ANW2C technology.

Respondent violated 22 CFR § 127.1(a)(1) on thirteen (13) occasions when it exported without authorization defense articles (military electronics and associated technical data) controlled under USML Categories XI(a)(5) SME,

[4] Amendment to 22 CFR § 130.9 from April 23, 2014, through April 26, 2017: 79 FR 8082, dated February 11, 2014, effective February 11, 2014.

XI(c)(2), XI(c)(18), and XI(d) to Canada for which a license or written approval was required.

Respondent violated 22 CFR § 127.1(a)(1) on four (4) occasion when it exported without authorization defense articles (T7 RCV, PLM-4, and Jagwire Software Plug in) controlled under USML Category IV(c), XI(a)(11), and XI(d) to Thailand (T7 RCV), Italy (PLM-4), Netherlands (Jagwire Software Plug in), and Germany (Jagwire Software Plug in) for which a license or written approval was required.

Respondent violated 22 CFR § 127.1(a)(1) on one (1) occasion when Respondent exported without authorization technical data controlled under USML Category XII(f) to a law firm in Canada for which a license or written approval was required.

Respondent violated 22 CFR § 127.2(b)(1) on one (1) occasion when it failed to furnish information to DDTC regarding a commission Respondent agreed to pay to an international marketing representative as required by 22 CFR § 130.9 and 22 CFR § 130.10.

Respondent violated 22 CFR § 127.1(b)(1) on two (2) occasions when it violated the of the terms or conditions of a license or approval granted by DDTC by failing to properly notify DDTC of exports as required by provisos.

Respondent violated 22 CFR § 127.1(b)(1) on nineteen (19) occasions when it violated the terms or conditions of ITAR provisions by failing to properly file information on active TAAs and MLAs as required by 22 CFR §§ 123.22, 124.1, 124.4(a), 124.4(b), or 124.5, and the terms or conditions of a license or approval by failing to provide an annual report of sale pursuant to the MLA clause required by 124.9(a)(5).

Respondent violated 22 CFR § 127.1(b)(1) on one (1) occasion by failing to comply with the requirements in 22 CFR § 123.22 by not presenting exports to CBP for endorsement.

## 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