

UNITED STATES DEPARTMENT OF STATE
BUREAU OF POLITICAL-MILITARY AFFAIRS
WASHINGTON, D.C. 20520

In the Matter of:

Aeroflex Incorporated.

A Delaware Corporation

Respondent

CONSENT AGREEMENT

WHEREAS, the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State ("Department") has notified Aeroflex Incorporated, including its operating divisions, subsidiaries and business units, ("Respondent") of its intent to institute an administrative proceeding pursuant to section 38 of the Arms Export Control Act, as amended ("AECA") (22 U.S.C. §2778), and its implementing regulations the International Traffic in Arms Regulations ("ITAR") (22 C.F.R. pts. 120-130);

WHEREAS, the Department acknowledges that Respondent described many of these matters in voluntary disclosures submitted to the

Department, and cooperated with the Department's review of these matters;

WHEREAS, the Department acknowledges that Respondent implemented, and continues to implement, AECA and ITAR compliance measures, including certain measures remedial to the violations contained in the Proposed Charging Letter;

WHEREAS, Respondent has reviewed the Proposed Charging Letter and this Consent Agreement, fully understands these documents, and enters into this Consent Agreement voluntarily and with full knowledge of its rights;

WHEREAS, Respondent without admitting or denying the allegations, wishes to settle and dispose of all potential civil charges, penalties and sanctions arising from the Proposed Charging Letter, and from the facts that Respondent has disclosed in writing to the Department in its disclosures as described in the Proposed Charging Letter, by entering into this Consent Agreement;

WHEREAS, Respondent agrees that this Consent Agreement will remain in effect for a period of two (2) years, subject to the terms and conditions set forth below;

WHEREAS, Respondent understands that a violation of this Consent Agreement is considered a violation of the related administrative order ("Order"), and agrees that if the Department finds that this Consent Agreement was negotiated based on Respondent's knowingly providing materially false or misleading information to the Department, the Department may revoke this Consent Agreement and the Order and bring additional charges against Respondent; and

WHEREAS, the Department and Respondent agree to be bound by this Consent Agreement and the Order to be entered by the Assistant Secretary of State for Political-Military Affairs.

Now, WHEREFORE, the Department and Respondent agree as follows:

Parties

(1) The Parties to this Consent Agreement are the Department and Respondent, including Respondent's operating divisions, subsidiaries, and business units, and their assignees and successors, and in the event of reorganization or merger, the terms of this agreement will follow and apply to all affected entities or units.

Jurisdiction

(2) The Department has jurisdiction over Respondent under the AECA and the ITAR in connection with the matters identified in the Proposed Charging Letter.

General Remedial Measures

(3) Respondent, reflecting its commitment to conduct its business in full compliance with the AECA and ITAR, and in order to ensure, in particular, that there are no unauthorized exports of ITAR-controlled defense articles, or technical data, agrees to implement the following remedial measures and such additional measures as may be mutually agreed upon by Respondent and the Director, Office of Defense Trade Controls Compliance ("DTCC"), and agrees further that these measures will remain in effect for two (2) years, subject to the terms and conditions below, as part of this Consent Agreement entered into with the Department.

(4) Further, Respondent agrees that these measures will be incorporated into any of Respondent's future business acquisitions that are involved in the design, manufacture, sale, export, brokering, or re-export or re-transfer of ITAR-controlled defense articles, technical data, and defense services within 6 months of that acquisition, unless the Director, DTCC approves an exception to this requirement.

(5) Further, if Respondent sells any of its operating divisions, subsidiaries, or business units that are engaged in ITAR-regulated activities, or is a party to a corporate merger involving such entities, Respondent agrees to notify DTCC sixty (60) days prior to such sale or

merger. Respondent also agrees that in the event of a sale or if Respondent is a party to a corporate merger, to notify the purchaser or merging party in writing, that the terms and conditions of this Consent Agreement will apply to the divested subsidiary, business unit or division, and to require the purchaser or merging party to acknowledge in writing, prior to the sale or merger, that the purchaser or merging party will be bound by the terms and conditions of this Consent Agreement unless at least sixty (60) days prior to such sale or merger Respondent consults with DTCC regarding whether the terms and conditions of this Consent Agreement shall apply to the divested subsidiary, business unit or division, and DTCC determines prior to the sale that the terms and conditions will not apply.

(6) Respondent acknowledges and accepts its obligation to maintain effective export control oversight, infrastructure, policies and procedures for its AECA/ITAR-regulated activities.

(7) Under this Consent Agreement, Respondent shall ensure that adequate resources are dedicated to ITAR compliance throughout the Respondent's operating divisions, subsidiaries and business units. Respondent will establish policies and procedures for all Respondent employees with responsibility for AECA and ITAR compliance to address lines of authority, staffing increases, performance evaluations, career paths, promotions, and compensation.

(8) Within one hundred twenty (120) days of the date of the Order, Respondent, in coordination with the Internal Special Compliance Official ("ISCO" – see below), will conduct an internal review of AECA and ITAR compliance resources throughout its operating divisions, subsidiaries, and business units and establish the necessary actions to ensure that sufficient resources are dedicated to compliance, including the use of compliance cross-trained employees on a full or part-time basis to perform specified compliance functions.

(9) Respondent will provide to the Director, DTCC within six (6) months from the date of the Order, and then semi-annually thereafter, status reports (see paragraph 10(n)(3)(ii) below), by ITAR-regulated operating divisions, subsidiaries, and business units on ITAR compliance program enhancements and resource levels and their effect on ensuring ITAR compliance. Respondent shall provide AECA and

ITAR compliance oversight and ensure that best practices learned are implemented throughout all of its ITAR-regulated businesses.

Official Designated for Consent Agreement Compliance and Oversight

(10) Respondent shall appoint, in consultation with and at the approval of the Director, DTCC, a qualified individual from within Respondent to serve as an Internal Special Compliance Official (“ISCO”). The term, authorities, and responsibilities of the ISCO are described below:

(a) Respondent shall nominate a person from within Respondent to serve as ISCO within sixty (60) days from the date of the Order, and the nomination shall be subject to the written approval of the Director, DTCC. Within fifteen (15) days following the date of the approval of the nomination by the Director, DTCC, Respondent shall appoint the person to the position of ISCO.

(b) Within thirty (30) days of appointment of the ISCO, Respondent shall empower him/her with a written delegation of authority, and statement of work approved by DTCC, to permit him/her to monitor, oversee, and promote Respondent’s AECA and ITAR compliance with the terms of this Consent Agreement in a manner consistent with the purpose of this Consent Agreement and the Order, its specific terms and conditions, and other activities subject to the ITAR and the AECA. The ISCO will report to Respondent’s Senior Vice President and General Counsel and the Director, DTCC as set forth herein. The ISCO shall perform his/her duties in consultation with DTCC.

(c) The ISCO shall serve for the duration of the Consent Agreement.

(d) The ISCO may also be requested to perform additional export oversight, monitoring and coordination of activities as agreed to by Respondent and the Director, DTCC.

(e) In fulfilling the responsibilities set forth in this Consent Agreement, the ISCO may, at his/her sole discretion, present any

export compliance-related issue directly to any or all among Respondent's Chief Executive Officer, the Senior Vice President and General Counsel, and if necessary the Director, DTCC.

(f) The Respondent's Senior Vice President and General Counsel will brief the Board of Directors, or appropriate committee thereof, at least annually concerning any findings and recommendations by the ISCO, Respondent's response and implementation of the same, and the status of AECA and ITAR compliance generally within Respondent.

(g) Respondent's Senior Vice President and General Counsel shall notify the Board of Directors of the appointment of the ISCO. Such notification shall include a description of the ISCO's powers, duties, authorities and responsibilities. Respondent shall post this notice on Respondent's internal website for the duration of this Consent Agreement.

(h) If for any reason the appointed ISCO is unable to serve the full period of his/her appointment, or temporarily is unable to carry out the responsibilities described herein for greater than thirty (30) days, or if the Director, DTCC decides that the ISCO shall be removed for failure to satisfactorily perform his/her duties, Respondent's Senior Vice President and General Counsel shall recommend a successor acceptable to the Director, DTCC. Agreement to the replacement by the Director, DTCC shall be confirmed in writing to Respondent. Such recommendation shall be made at least thirty (30) days in advance of a new appointment unless a shorter period is agreed to by the Director, DTCC. If a successor ISCO is not appointed within forty-five (45) days of the termination or removal of the appointed ISCO, this Consent Agreement will be extended for the period of time equal to the period of time Respondent was without an approved appointed ISCO. Respondent will not be without an ISCO for more than one hundred twenty (120) days unless the Director, DTCC grants an extension. If the ISCO for any reason is unable to carry out the responsibilities described herein on a temporary basis, not to exceed thirty (30) days, then Respondent's General Counsel, or a suitable official acceptable to Respondent and the Director, DTCC, shall assume the duties and authorities of the ISCO in the

interim, subject to the approval of the Director, DTCC. The written delegation of authority and statement of work described in subparagraph (b) above shall make provision for this event.

(i) With the understanding that nothing in this Consent Agreement shall be interpreted to compel or constitute a waiver of applicable attorney-client or work product protections, the ISCO shall have full and complete access to all personnel, books, records, documents, audits, reports, facilities and technical information relating to compliance with this Consent Agreement and the Order, and to all munitions authorizations, licenses, and Respondent's guidance relating to the export of defense articles and defense services.

(j) Respondent, including its operating divisions and subsidiaries, shall cooperate with all reasonable requests of the ISCO, including requests for assistance to obtain necessary security clearances, and shall take no action to interfere with or impede the ISCO's ability to monitor Respondent's compliance with this Consent Agreement, the Order, and the AECA and the ITAR, or to carry out the ISCO's other responsibilities set forth in this Consent Agreement. The ISCO shall notify DTCC whenever the ISCO encounters any difficulties in exercising the duties and responsibilities assigned under this Consent Agreement.

(k) The ISCO shall, with the approval of the Director, DTCC and the concurrence of Respondent, have the authority to employ in a support capacity at the expense of Respondent such external consultants, assistants, and other professional staff as are reasonably necessary for the ISCO to carry out the ISCO duties and responsibilities.

(l) In the event Respondent has a demonstrable rationale for requesting the removal of the ISCO, such information shall be presented to the Director, DTCC, along with recommendations for a replacement, pursuant to the conditions of this paragraph (10). Any determination as to the removal of the ISCO shall be at the sole discretion of the Director, DTCC.

(m) The Director, DTCC shall on his/her own initiative or at the request of the ISCO issue such guidance as may be necessary or appropriate to help ensure strict compliance with the AECA and ITAR.

(n) The ISCO shall have three (3) principal areas of responsibility regarding the future conduct of Respondent and Respondent's operating divisions, subsidiaries or business units engaged in activities regulated under the ITAR:

(1) Policy and Procedure: The ISCO shall monitor Respondent's AECA and ITAR compliance programs with specific attention to the following areas associated with the offenses alleged in the Proposed Charging Letter:

- i. Policies and procedures for the identification, including export control jurisdiction determination and marking, as necessary, of defense articles including technical data;
- ii. Policies and procedures for incorporating AECA and ITAR compliance into Respondent's management business plans at the senior executive level;
- iii. Policies and procedures for the management and handling of Department communications, commodity jurisdiction determinations, authorized agreements and licenses, including temporary import and export authorizations;
- iv. Policies and procedures for the export, re-transfer and re-export of defense articles and services;
- v. Policies and procedures for the identification of ITAR-controlled technical data, to include the use of derivative drawings or derivative technical data, and marking thereof;
- vi. Policies and procedures for the transfer and re-transfer of technical data;
- vii. Policies and procedures for preventing, detecting and reporting AECA and ITAR violations;

- viii. Policies and procedures for tracking research and development work to ensure that all such work on defense articles, including technical data, is in compliance with the AECA and ITAR from conception to completion of the project; and
- ix. Policies and procedures identified as necessary by the Respondent or ISCO during the course of this Consent Agreement, as approved by Director, DTCC.

(2) Specific Duties: The ISCO shall oversee the following specific areas:

- i. The Respondent's implementation of the compliance measures required by this Consent Agreement;
- ii. Respondent's corporate oversight of ITAR compliance for performance of its responsibilities under this Consent Agreement and the Order in a timely and satisfactory manner;
- iii. The adequate allocation of resources to ITAR compliance, including the maintenance of adequate compliance staffing levels at Respondent and all operating divisions, subsidiaries, and business units that involve ITAR-regulated activities;
- iv. Account expenditures for remedial compliance measures in coordination with Respondent's Chief Financial Officer ("CFO");
- v. Enhancing incorporation of ITAR compliance into the Respondent's management business plans at the senior executive level;
- vi. Respondent's measures for reporting violations and potential violations of the AECA and ITAR to DTCC either through voluntary disclosure or in response to a directed disclosure and;

- vii. Implementation of policies and procedures encouraging Respondent's employees to report ITAR compliance problems without fear of reprisal.

(3) Reporting: The ISCO is responsible for the following reporting requirements:

- i. Tracking, evaluating and reporting on Respondent's review of ITAR violations and compliance resources;
- ii. Providing to the Director, DTCC within six (6) months from the date of the Order, and then semi-annually thereafter, status reports on ITAR compliance program enhancements and resource levels and their impact on or benefit to ensuring ITAR compliance (see paragraph (9) above) throughout Respondent. The reports will include status updates regarding Respondent's progress in implementing program for jurisdictional determinations and in performing classification review described in paragraph (15);
- iii. Providing a yearly accounting report certified as correct by the CFO of these expenditures to Respondent's Senior Vice President and General Counsel or other senior official as appropriate, and the Director, DTCC; and
- iv. Providing reports to the Board of Directors or appropriate committee thereof, the Senior Vice President and General Counsel, and the Director, DTCC, concerning Respondent's compliance with this Consent Agreement and the Order, as well as with such other pertinent U.S. Government munitions authorizations and licenses, as well as resource allocation, guidance, and the like then in force pertaining to Respondent's ITAR-regulated activities. These reports shall include findings, conclusions and any recommendations necessary to ensure strict compliance with the ITAR and

describe the status of implementation of previous recommendations advanced by the ISCO. These reports may, in a separate annex, also include any relevant comments or input by Respondent. Any such reports shall not affect Respondent's use of the Voluntary Disclosure procedures set forth in section 127.12 of the ITAR and any benefits gained therefrom. The first report shall be provided six months from the date of the Order, and semiannually thereafter during the remainder of the ISCO's period of appointment.

Employee Reporting

(11) Respondent will implement, promote, and publicize an Employee Reporting Program for reporting allegations of violations of the AECA and the ITAR to ensure that violations may be readily reported via these channels without fear of recrimination or retaliation. Complaints or concerns about the adequacy of Respondent's response to reported allegations, questions or similar matters involving compliance with the AECA and the ITAR will be reported to the Senior Vice President and General Counsel and the ISCO. The Senior Vice President and General Counsel will be responsible for resolving such matters. If the Senior Vice President and General Counsel is the subject of the complaint or concern involving the AECA and the ITAR, the matter will be referred to the CEO for resolution. The General Counsel shall submit to the Board of Directors, or the appropriate committee thereof, a semiannual report assessing the effectiveness of Respondent's existing employee reporting mechanisms relating to export matters and will provide a copy to the Director, DTCC.

Strengthened Compliance Policies, Procedures, Infrastructure, Training

(12) Within twelve (12) months of the date of the Order, Respondent will have instituted strengthened and uniform corporate export compliance procedures focused principally on Respondent's business

operations such that: (a) all Respondent employees engaged in ITAR-regulated activities are familiar with the AECA and the ITAR, and their own and Respondent's responsibilities thereunder; (b) all persons responsible for supervising those employees, including senior managers of those units, are knowledgeable about the underlying policies and principles of the AECA and the ITAR; and (c) there are records indicating the names of employees, trainers, and level and area of training received (e.g., identification, classification, and provision of technical data, applicability of ITAR to foreign origin defense articles, export, re-export, and re-transfer requirements, etc.).

(13) Respondent agrees to continue to implement a comprehensive and reasonably uniform automated export compliance system throughout Respondent's operating divisions, subsidiaries and business units engaged in ITAR-regulated activity to strengthen Respondent's internal controls for ensuring compliance with the AECA and the ITAR, unless for certain operating divisions, subsidiaries and business units involved in limited ITAR-regulated activity the Director, DTCC approves an exception. This system will track the decision process from the initiation of a request for potential export authorization or clarification of an existing authorization to its conclusion that will reflect Respondent's ability to oversee and monitor export activity. This system will cover the initial identification of all technical data and technical assistance in any form proposed to be disclosed to any foreign persons. This system will also provide for automated management of compliance with ITAR Part 124 agreements and Part 123 temporary import and export authorizations. Respondent will enable DTCC to access the system when on site or be provided information from the system upon request or both. Respondent understands that DTCC may, in its sole discretion, not authorize use of exemptions for shipments of unclassified technical data in furtherance of a technical assistance agreement and that DTCC may exercise this authority pending the institution of this system.

(14) Respondent will develop and implement policies, procedures, and training to ensure accurate identification and tracking of ITAR-controlled technical data that is transferred electronically via Respondent's information technology infrastructure, including by email, or through tangible transfers outside of Respondent's information technology networks. These measures will also control the movement of

laptops and portable storage devices containing ITAR-controlled technical data.

Classification Review

(15) Respondent shall review and verify the export control jurisdiction of all hardware that Respondent's ITAR-regulated operating divisions, subsidiaries and business units have exported in the past five years, and any defense services, technical data, including software, directly related to such hardware. Respondent shall conclude the jurisdiction review during the term of this Consent Agreement. Prior to export, re-export and/or retransfer, Respondent shall review and verify the export control jurisdiction of each hardware item (and any defense services, technical data, including software, directly related to such hardware item) for which such jurisdiction was not previously and accurately determined and/or verified during the term of this Consent Agreement. Respondent shall implement a revised program for jurisdictional determinations throughout Respondent's ITAR-regulated operating divisions, subsidiaries and business units.

Audits

(16) Two (2) audits will be performed during the term of the Consent Agreement. The first audit shall be conducted by an outside consultant with expertise in AECA/ITAR matters, approved by the Director, DTCC, and will be conducted under the supervision of the ISCO. The audit shall provide a thorough assessment of the effectiveness of the Respondent's implementation of all measures set forth in this Consent Agreement with focus on those actions undertaken to address the compliance problems identified in the Proposed Charging Letter, the policies, procedures and training established by Respondent, and such other areas as may be identified by the ISCO or the Director, DTCC. Additionally, the audit will assess the overall effectiveness of Respondent's ITAR compliance programs.

(17) Within six (6) months after the date of the Order, a draft audit plan for the first audit will be submitted to the Director, DTCC for review and comment. Within twelve (12) months after the date of the Order, the

audit will be completed along with a written report containing recommendations for improvements with respect to Consent Agreement measures or compliance with the AECA or the ITAR more generally. The report will be submitted by Respondent to the Director, DTCC along with Respondent's plan on how it will address those recommendations.

(18) Subsequently, Respondent shall have a second audit conducted by an outside consultant with expertise in AECA/ITAR matters, or an internal employee or committee, as approved by the Director, DTCC, to confirm whether Respondent addressed the compliance recommendations from the initial audit report. The second audit will be conducted under the supervision of the ISCO. Within eighteen months (18) after the date of the Order, a draft audit plan for the second audit will be submitted to the Director, DTCC for review and comment. Within twenty-one (21) months after the date of the Order, the second audit will be completed along with a written report confirming whether Respondent addressed the compliance recommendations from the initial audit report as well as his/her recommendations where there were any deficiencies. The report will be submitted by Respondent to the Director, DTCC along with Respondent's plan on how it will address those recommendations.

Penalty

(19) Respondent agrees that it shall pay in fines and in remedial compliance measures an aggregate civil penalty of eight million dollars (\$8,000,000) in complete settlement of alleged civil violations pursuant to Section 38 of the AECA and the ITAR as set forth in the Proposed Charging Letter. Respondent agrees to waive its rights to raise the defense of Statute of Limitations with regard to the collection of the civil penalty imposed by this Consent Agreement and that the Statute of Limitations shall be tolled until the last payment is made. Respondent also agrees that such civil penalty shall be a nondischargeable debt in accordance with Section 523(a)(7) of the Federal Bankruptcy Code. The civil penalty shall be payable as follows:

- a) Four million dollars (\$4,000,000) shall be payable in the following manner:

- i. Two million dollars (\$2,000,000) shall be paid within ten (10) days from the date of the Order;
 - ii. One million dollars (\$1,000,000) shall be paid on each of the first and second anniversaries of the date of the Order.
 - iii. The Department and Respondent agree that no interest shall accrue or be due on the unpaid portion of the civil penalty if timely payments are made as set forth in paragraphs (19)(a)(i) and (19)(a)(ii) above.
- b) The remaining penalty of four million dollars (\$4,000,000) is hereby assessed for remedial compliance measures, but this amount will be suspended on the condition that this amount, as determined by DTCC as set forth in paragraph (19)(c) below: 1) has been applied by Respondent to self-initiated, pre-Consent Agreement remedial compliance measures, and/or; 2) has been applied to Consent Agreement-authorized remedial compliance costs over the term of this Consent Agreement for the purpose of defraying a portion of the costs associated with the remedial compliance measures specified in this Consent Agreement. DTCC may suspend an amount up to, but not exceeding, two million dollars (\$2,000,000) for pre-Consent Agreement remedial compliance measures.
- c) In accordance with paragraph (19)(b), Respondent's CFO, in consultation with the ISCO, will provide to DTCC no later than one (1) year from the date of the Order, and then annually thereafter, for verification and approval an itemized accounting, certified as correct by the CFO, of self-initiated, pre-Consent Agreement and all Consent Agreement-authorized remedial compliance expenditures, to include those expenditures claimed against suspended penalties, showing specifics of how money was used to strengthen compliance, including within the terms of this Consent Agreement. To the extent that DTCC determines that expenditures claimed or any portion thereof were utilized for self-initiated, pre-Consent Agreement remedial measures undertaken prior to the date of the Order, or for Consent Agreement-authorized remedial compliance costs, that

amount will be credited against the suspended civil penalty amount outlined in paragraph (19)(b).

- d) Any remaining portion of the suspended penalty unutilized at the conclusion of the term of the Consent Agreement will no longer be suspended and shall be paid within thirty (30) days.

(20) From the date of the Order, Respondent is precluded from applying any portion of the eight million dollar (\$8,000,000) penalty set forth in paragraph (19) as costs in any contract with any agency of the U.S. Government or any other contract where the result would be the application of any portion of the penalty as costs in any contract with any agency of the U.S. Government. Respondent agrees and shall certify in each written accounting report that the penalty or any portion thereof: (a) will be treated as expressly unallowable costs under the Federal Acquisition Regulations; (b) will not be recovered or sought to be recovered as allowable costs, either directly or indirectly under any federal prime contract, grant or subcontract; and (c) will not be taken as a federal tax deduction for any year following the date of the Order. In the event Respondent violates these prohibitions, the Department may deem it a “failure to apply funds appropriately for the required purpose.”

(21) Any failure to apply funds appropriately for the required purpose or to provide a satisfactory accounting shall result in a lifting of the suspension, in which case Respondent shall be required to pay immediately to the Department the amount of the suspended portion of the penalty, less any amounts the Department deems to have been properly applied and accounted for expenditures in compliance with this Consent Agreement.

Defense Services and Defense Articles

(22) Respondent and its ITAR-regulated operating divisions, subsidiaries, and business units acknowledge and accept the authority of the Department to designate what is a defense article, and that the ITAR requires written authorization before such articles are exported, re-exported, or retransferred, regardless of whether the underlying defense article is used in a commercial system or product. Respondent further acknowledges that the Commodity Jurisdiction process, set forth in

section 120.4 of the ITAR, is the only official mechanism by which questions regarding jurisdiction and categorization may be addressed. Respondent and its ITAR-regulated operating divisions, subsidiaries, and business units acknowledge and accept that unless and until there is an amendment to the ITAR regarding defense services: (1) the definition of “defense services” in the ITAR is well established and clearly understood by them as setting out responsibilities and requirements which are binding as a matter of law and regulation on them; (2) the furnishing of defense services to foreign persons – regardless of whether the underlying defense article(s) is of U.S. or foreign origin – is appropriately subject to the Department’s control under the ITAR, even when no technical data is involved (e.g., all the information relied upon in furnishing defense services to a foreign government or foreign person is in the public domain); (3) the law and regulations governing “defense services” and proposals to foreign persons are sufficiently clear and specific as to be enforceable by the U.S. Government on civil grounds; and (4) Respondent is responsible and obligated as a matter of law and regulation to comply with the requirements of such laws and regulations as they pertain to “defense services” and related matters.

Debarment

(23) Respondent has acknowledged the seriousness of the violations cited in the Proposed Charging Letter. Respondent has cooperated with the Department’s review, expressed regret for these activities and taken steps to improve its compliance programs. It has also undertaken to make amends by paying a cash penalty and implementing the significant additional remedial compliance actions specified in this Consent Agreement. For these reasons, the Department has determined not to impose an administrative debarment of Respondent based on the civil charges in the Proposed Charging Letter at this time. In the event of any criminal conviction for a violation of or conspiracy to violate the AECA of Respondent (or any of its operating divisions, subsidiaries, and business units over which Respondent exercises control) arising from the activities described in the Proposed Charging Letter, a statutory debarment of the Respondent (or the operating division, subsidiary, or business unit subject to criminal conviction) may be imposed in accordance with section 127.7 of the ITAR. The Department also reserves all rights to impose additional sanctions, including debarment

under the ITAR, against Respondent, any subsidiary, division, or other affiliate over which Respondent exercises control, if it does not fulfill the provisions of the Consent Agreement or is responsible for other compliance or law enforcement issues under the AECA or under other statutes enumerated in section 120.27 of the ITAR.

Legal Department Support

(24) Respondent's General Counsel's office, which shall include the Director of Global Trade Compliance, will continue to provide support in all ITAR-regulated operating divisions, subsidiaries, and business units for all matters involving the AECA and the ITAR. This support will be structured to achieve consistent application of the AECA and the ITAR by Respondent. Additionally, Respondent's General Counsel's office shall ensure that in each ITAR-regulated operating division, subsidiary, and business unit appropriate legal support is made available as necessary to the principal personnel responsible for compliance with the AECA and the ITAR, and appropriate legal support is provided with respect to such matters.

On-site Reviews by the Department

(25) For the purpose of assessing compliance with the provisions of the AECA, the ITAR and future munitions licenses and other authorizations, Respondent agrees to arrange and facilitate, with minimal advance notice, on-site reviews by the Department while this Consent Agreement remains in effect.

Understandings:

(26) No agreement, understanding, representation, or interpretation not contained in this Consent Agreement may be used to vary or otherwise affect the terms of this Consent Agreement or the Order, when entered, nor shall this Consent Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances addressed in the Proposed Charging Letter. Respondent acknowledges and accepts that

there is no understanding expressed or implied through this Consent Agreement with respect to a final decision by the Department of State concerning export licenses or other U.S. Government authorizations.

(27) Respondent acknowledges the nature and seriousness of the offenses charged in the Proposed Charging Letter, including the potential risk of harm to the security and foreign policy interests of the United States. If this Consent Agreement is not approved pursuant to an Order entered by the Assistant Secretary for Political-Military Affairs, the Department and Respondent agree that they may not use this Consent Agreement in any administrative or judicial proceeding, and that the parties shall not be bound by the terms contained in this Consent Agreement.

(28) The Department agrees that upon signing of the Order, this Consent Agreement resolves with respect to Respondent the civil penalties or administrative sanctions with respect to violations of section 38 of the AECA or the ITAR arising from facts Respondent has disclosed in writing to the Department in its voluntary and directed disclosures assigned DTCC case numbers 07-0000593, 07-0000609, 07-0000798, 08-0000493, 08-0000951, 09-0000366, 09-0001252, and 10-0000485, or that have been identified in the Proposed Charging Letter, except that in the event of a criminal conviction of Respondent (or any of its subsidiaries, divisions, or other affiliates over which Respondent exercises control) for a violation of or conspiracy to violate the AECA, arising from any of the activities described in the Proposed Charging Letter or otherwise, the Department will follow the requirements of section 38(g)(4) of the AECA and reserves the discretion to impose a statutory debarment in accordance with section 127.7 of the ITAR.

Waiver

(29) Respondent waives upon the signing of the Order all rights to seek any further steps in this matter, including an administrative hearing pursuant to Part 128 of the ITAR. Respondent also waives any such rights with respect to any additional monetary penalty assessed by the Director, DTCC in connection with an alleged material violation of this Consent Agreement (any such additional monetary penalty imposed will be limited to one million dollars (\$1,000,000) or less) except as follows:

In the event that the Director, DTCC determines that Respondent has materially violated this Consent Agreement and imposes such additional monetary penalty and Respondent disputes such determination, Respondent may appeal such determination to the Assistant Secretary for Political-Military Affairs, and the decision of the Assistant Secretary for Political-Military Affairs shall be the final determination in the matter, which may not be appealed. Respondent also agrees that any such additional monetary penalty shall be nondischargeable under Section 523(a)(7) of the Federal Bankruptcy Code, and subject to the conditions of paragraph (20). Respondent also waives the right to contest the validity of this Consent Agreement or the Order, including in any action that may be brought for the enforcement of any civil fine, penalty or forfeiture in connection with this Consent Agreement or Order.

Certification

(30) Three (3) months prior to the two (2) year anniversary of the date of the Order, Respondent shall submit to the Director, DTCC a written certification as to whether all aspects of this Consent Agreement have been implemented and Respondent's export compliance program has been assessed and whether Respondent's export compliance program is adequate to identify, prevent, detect, correct, and report violations of the AECA and the ITAR. The Consent Agreement shall remain in force beyond the two (2) year term until such certification is submitted and the Director, DTCC determines based on this certification and other factors that all compliance measures set forth in this Consent Agreement have been implemented and that Respondent's ITAR compliance program appears to be adequate to identify, prevent, detect, correct and report violations of the AECA and the ITAR.

Documents to be made public

(31) Respondent understands that the Department will make this Consent Agreement, the Proposed Charging Letter, and the Order, when entered, available to the public.

When Order Becomes Effective

(32) This Consent Agreement shall become binding on the Department only when the Assistant Secretary for Political-Military Affairs approves it by entering the Order, which will have the same force and effect as a decision and Order issued after a full administrative hearing on the record.

U.S. Department of State

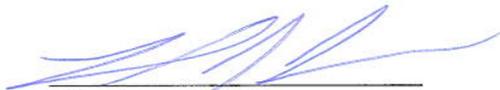


Tom Kelly

Acting Assistant Secretary for
Political-Military Affairs

August 6, 2013
Date

Aeroflex Incorporated



Mr. Leonard Borow
Chief Executive Officer
Aeroflex Incorporated

JULY 26, 2013
Date