UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of: FLIR Systems, Inc. 27700 SW Parkway Avenue Wilsonville, OR 97070 Respondent

ORDER RELATING TO FLIR SYSTEMS, INC.

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has notified FLIR Systems, Inc., of Wilsonville, Oregon ("FLIR"), of its intention to initiate an administrative proceeding against FLIR pursuant to Section 766.3 of the Export Administration Regulations (the "Regulations"),[1] through the issuance of a Proposed

[1] The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) ("the EAA"), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) ("IEEPA"). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 ("ECRA"). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

Charging Letter to FLIR that alleges that FLIR committed two violations of the Regulations.[2] Specifically, the charges are:

Charge 1 15 C.F.R. § 764.2(g) – Misrepresentation and concealment of facts

1. Between, on, or about November 7, 2012, and on or about December 4, 2013, FLIR made incomplete or inaccurate representations, statements, or certifications to BIS or officials of other agencies of the U.S. Government in the course of an action subject to the Regulations or for the purpose of or in connection with effecting an export, reexport or other activity subject to the EAR. Specifically, FLIR made incomplete or inaccurate representations, statements, or certifications to BIS and other U.S. Government agencies regarding a certain anti-tamper protection mechanism for a FLIR Uncooled Focal Plane Array ("the UFPA") while seeking and obtaining an official classification identifying the UFPA on the EAR's Commerce Control List ("CCL") for export control purposes.

2. Section 764.2(g) of the EAR states that no person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to BIS or an official of any other United States agency, or indirectly through any other person in the course of an action subject to the EAR or for the purpose of or in connection with effecting an export, reexport, transfer (in-country) or other activity subject to the EAR. Further, all representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify BIS, and any other relevant agency, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention has occurred or may occur in the future.

3. FLIR's incomplete or inaccurate statements were made to the U.S. Government in preparation for and in support of an April 7, 2013 commodity jurisdiction ("CJ") request, through which FLIR sought a determination that the FLIR UFPA at issue was subject to the EAR, rather than the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. Parts 120-130, administered by the U.S. Department of State relating to defense articles and defense services on the U.S. Munitions List. The CJ determination that FLIR sought would include a formal classification identifying the Export Control Classification Number ("ECCN") for the UFPA on the CCL. At the

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2020). The charged violation occurred in 2012-2013. The Regulations governing the violation at issue are found in the 2012-2013 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2020 Regulations set forth the procedures that apply to this matter.

time of the request, the U.S. Government had generally considered UFPAs to be defense articles designed for military use.

4. On December 4, 2013, the Department of State determined that the UFPA was subject to the jurisdiction of the Department of Commerce, after a review of the UFPA's technical characteristics and performance specifications by requisite agencies of the United States Government, including the Departments of Commerce and Defense. This determination included a Department of Commerce determination that the UFPA was classified under ECCN 6A002.a.3.f on the CCL, and represented the first time that the U.S. Government had officially recognized a UFPA like the one described by FLIR as an item subject to the EAR, rather than a defense article on the U.S. Munitions List. Several years after this CJ was issued, FLIR submitted a voluntary self-disclosure acknowledging inaccurate and incomplete statements related to the CJ, including as described below. The U.S. Government upheld the jurisdiction determination and commodity classification of the 2013 CJ on December 23, 2018, despite continued concerns about the original presentations by FLIR.

5. Starting with the earliest meetings between FLIR and the U.S. Government regarding the UFPA on or about November 7, 2012, and continuing while the CJ request and CCL classification were under consideration, U.S. Government officials expressed concerns over whether the UFPA contained sufficient safeguards to prevent it from being adapted and diverted to end uses of concern, including uses in thermal imaging weapon sights.

6. To overcome the U.S. Government's concerns, FLIR repeatedly represented to U.S. Government officials, both in the lead up to FLIR's submission of the request and while it was being considered, that FLIR had developed an innovative anti-tamper system known as a "handshake" requirement. FLIR stated that the UFPA by itself would be "effectively useless" because of anti-tamper protection features, including the "handshake encryption," that only allowed the UFPA to operate in conditions defined by FLIR thermal camera hardware. For example, the Department of Defense asked for more details from FLIR concerning the anti-tamper protection system, including to ensure that it could not be circumvented. In response, FLIR submitted a March 8, 2013 white paper making additional representations about the system and its potential effectiveness, making it appear as if the "handshake encryption" was a developed feature, stating that "[t]he . . . UFPA can only be operated when integrated with the FLIR . . . camera electronics" and that the anti-tamper protections "addressed the need to prevent diversion of the UFPA[.]"

7. FLIR's representations and statements were intended to influence U.S. Government positions on the determination, including the Department of Commerce's position. When BIS asked FLIR on October 16, 2013 to verify that FLIR "has designed the . . . focal plane array so that it can only be operated when integrated with the . . . [FLIR]

camera electronics[,]" FLIR, through a senior Global Trade Compliance representative, affirmed that the statement was accurate.

8. In fact, contrary to FLIR's representations in its communications with the U.S. Government, a functional "handshake encryption" anti-tamper protection was never successfully developed by FLIR nor added as a feature of the UFPA at issue. After the 2013 CJ issued, FLIR produced cameras incorporating the UFPA without the "handshake encryption."

9. In making the incomplete or inaccurate representations, statements, or certifications as alleged above, in the course of an action subject to the Regulations, or for the purpose of or in connection with effecting an export, reexport or other activity subject to the Regulations, FLIR violated Section 764.2(g) of the Regulations.

Charge 2 15 C.F.R. § 764.2(g) – Misrepresentation and concealment of facts

10. BIS re-alleges and incorporates herein Paragraphs 1-9 above.

11. FLIR also made incomplete or inaccurate representations, statements, or certifications to BIS and officials of other U.S. Government agencies concerning the end uses of the UFPA at issue while seeking and obtaining an official classification identifying the UFPA on the CCL for export control purposes.

12. While FLIR generally emphasized the commercial future of thermal imaging in presentations to the government, FLIR stated that the camera including the UFPA subject to the CJ request was developed in response to demand from the cell phone market for a thermal imager that could fit the existing camera socket of a mobile phone and solely to satisfy robust demand for such product in the commercial cell phone market. In the CJ request it submitted on April 7, 2013, FLIR stated in the opening summary that the UFPA was designed "specifically for insertion into commercial smartphones" and that the UFPA's "**technical characteristics and performance reflect its commercial-only focus, commercial heritage, and applications that are non-threatening to national security.**" (Emphasis in original). Elsewhere in the CJ request and in other written materials presented to the government, FLIR made similar statements, and recognized the need to prevent diversion of the UFPA from the cell phone supply chain to uses other than insertion into smartphones.

13. In fact, FLIR knew that the UFPA would be inserted into products other than smartphones, because that was a part of the business and manufacturing strategy that FLIR had developed internally. FLIR had been contemplating other markets for the UFPA and related thermal imaging cameras since at least December 22, 2012. In particular, FLIR identified in internal company presentations several other products that could adopt a camera made from the UFPA, as FLIR made the business case for

the UFPA and plans to increase the volume of its production. However, FLIR did not disclose these plans in connection with the CJ request and classification determination, even in response to questions from the U.S. Government about what limits were in place to prevent use of the UFPA in military items such as weapon sights.

14. Despite its representations to the U.S. Government that the UFPA and related cameras were designed for the commercial smartphone market, FLIR developed internal company plans for military applications that could use cameras from the UFPAs in nano reconnaissance drones and set those plans in motion while the U.S. Government was still evaluating the CJ request and CCL classification. In September 2013, for example, FLIR brought a pre-production model of a thermal imaging camera incorporating the UFPA to a defense and security trade show in London, where FLIR worked with a Norwegian customer in the defense industry. After the CJ and related classification determination issued on December 4, 2013, the first sale by FLIR of cameras incorporating the UFPA was made not for the commercial smartphone market, but to that same customer for use in nano drones.

15. In making incomplete or inaccurate statements, or certifications in the course of an action subject to the Regulations, or for the purpose of or in connection with effecting an export, reexport or other activity subject to the Regulations, FLIR violated Section 764.2(g) of the Regulations.

WHEREAS, BIS and FLIR have entered into a Settlement Agreement pursuant to Section 766.18(a) of the Regulations, whereby they agreed to settle this matter in accordance with the terms and conditions set forth therein; and

WHEREAS, I have approved of the terms of such Settlement Agreement;

IT IS THEREFORE ORDERED:

FIRST, FLIR shall be assessed a civil penalty in the amount of $307,922, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of this Order.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2012)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and if payment is not made by the due date specified herein, FLIR will be assessed, in addition to the full amount of the

civil penalty and interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

THIRD, FLIR shall complete two internal audits of its export controls compliance program. The results of the audits, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, Portland Resident Office, 1220 SW 3rd Avenue, Suite 1002, Portland, Oregon 97204. The first audit shall cover a period of no less than twelve (12) consecutive months immediately prior to the date of the Order, and the second audit shall cover a period of no less than twelve (12) consecutive months immediately after the date of the Order, and the related reports shall be due to the BIS Portland Resident Office no later than six (6) months and eighteen (18) months, respectively, from the date of the Order. Said audits shall be in substantial compliance with the Export Compliance Program (ECP) sample audit module, and each audit shall include a comprehensive assessment of FLIR's compliance with the Regulations. The ECP sample audit module is available on the BIS website at https://www.bis.doc.gov/index.php/documents/pdfs/1641-ecp/file. In addition, where said audits identify actual or potential violations of the Regulations, FLIR shall promptly provide a detailed plan of corrective actions to be taken, and copies of the pertinent air waybills and other export control documents and supporting documentation related to the identified compliance concerns, to the BIS Portland Resident Office.

FOURTH, that the full and timely payment of the civil penalty in accordance with the payment schedule set forth above, and the completion and submission of the audit as set forth above, are hereby made conditions to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be

granted, to FLIR. Accordingly, if FLIR should fail to pay the civil penalty in a full and timely manner, or complete the audits and submit the audit results, the undersigned may issue an order denying all of FLIR's export privileges under the Regulations for a period of one year from the date of failure to make such payment, complete such audit, or submit such audit results.

FIFTH, FLIR shall not dispute or deny, directly or indirectly, the allegations contained in the Proposed Charging Letter or this Order or take any position contrary thereto in any public statement. The foregoing does not affect FLIR's testimonial obligations in any administrative or judicial proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

SIXTH, the Proposed Charging Letter, the Settlement Agreement, and this Order shall be made available to the public.

This Order, which constitutes the final agency action in this matter, is effective immediately.

KEVIN KURLAND
Digitally signed by KEVIN KURLAND
Date: 2021.04.29 12:31:44 -04'00'

Kevin J. Kurland
Acting Assistant Secretary of Commerce
for Export Enforcement

Issued this 29th day of April, 2021.

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of: FLIR Systems, Inc. 27700 SW Parkway Avenue Wilsonville, OR 97070 Respondent

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between FLIR Systems, Inc., of Wilsonville, Oregon ("FLIR"), and the Bureau of Industry and Security, U.S. Department of Commerce ("BIS") (collectively, the "Parties"), pursuant to Section 766.18(a) of the Export Administration Regulations (the "Regulations").[1]

WHEREAS, FLIR filed a voluntary self-disclosure with BIS's Office of Export Enforcement in accordance with Section 764.5 of the Regulations concerning the matters at issue herein;

[1] The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) ("the EAA"), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, including the Notice of August 8, 2018 (83 Fed. Reg. 39,871 (Aug. 13, 2018)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) ("IEEPA"). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. §§ 4801-4852 ("ECRA"). While Section 1766 of ECRA repeals the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA.

WHEREAS, BIS has notified FLIR of its intentions to initiate an administrative proceeding against FLIR, pursuant to the Regulations;[2]

WHEREAS, BIS has issued a Proposed Charging Letter to FLIR that alleges that FLIR committed two violations of the Regulations, specifically:

Charge 1 15 C.F.R. § 764.2(g) – Misrepresentation and concealment of facts

1. Between, on, or about November 7, 2012, and on or about December 4, 2013, FLIR made incomplete or inaccurate representations, statements, or certifications to BIS or officials of other agencies of the U.S. Government in the course of an action subject to the Regulations or for the purpose of or in connection with effecting an export, reexport or other activity subject to the EAR. Specifically, FLIR made incomplete or inaccurate representations, statements, or certifications to BIS and other U.S. Government agencies regarding a certain anti-tamper protection mechanism for a FLIR Uncooled Focal Plane Array ("the UFPA") while seeking and obtaining an official classification identifying the UFPA on the EAR's Commerce Control List ("CCL") for export control purposes.

2. Section 764.2(g) of the EAR states that no person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to BIS or an official of any other United States agency, or indirectly through any other person in the course of an action subject to the EAR or for the purpose of or in connection with effecting an export, reexport, transfer (in-country) or other activity subject to the EAR. Further, all representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify BIS, and any other relevant agency, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention has occurred or may occur in the future.

3. FLIR's incomplete or inaccurate statements were made to the U.S. Government in preparation for and in support of an April 7, 2013 commodity jurisdiction ("CJ") request, through which FLIR sought a determination that the FLIR UFPA at issue was subject to the EAR, rather than the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. Parts 120-130, administered by the U.S. Department of State

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2020). The charged violation occurred in 2012-2013. The Regulations governing the violation at issue are found in the 2012-2013 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2012-2013 Regulations set forth the procedures that apply to this matter.

relating to defense articles and defense services on the U.S. Munitions List. The CJ determination that FLIR sought would include a formal classification identifying the Export Control Classification Number ("ECCN") for the UFPA on the CCL. At the time of the request, the U.S. Government had generally considered UFPAs to be defense articles designed for military use.

4. On December 4, 2013, the Department of State determined that the UFPA was subject to the jurisdiction of the Department of Commerce, after a review of the UFPA's technical characteristics and performance specifications by requisite agencies of the United States Government, including the Departments of Commerce and Defense. This determination included a Department of Commerce determination that the UFPA was classified under ECCN 6A002.a.3.f on the CCL, and represented the first time that the U.S. Government had officially recognized a UFPA like the one described by FLIR as an item subject to the EAR, rather than a defense article on the U.S. Munitions List. Several years after this CJ was issued, FLIR submitted a voluntary self-disclosure acknowledging inaccurate and incomplete statements related to the CJ, including as described below. The U.S. Government upheld the jurisdiction determination and commodity classification of the 2013 CJ on December 23, 2018, despite continued concerns about the original presentations by FLIR.

5. Starting with the earliest meetings between FLIR and the U.S. Government regarding the UFPA on or about November 7, 2012, and continuing while the CJ request and CCL classification were under consideration, U.S. Government officials expressed concerns over whether the UFPA contained sufficient safeguards to prevent it from being adapted and diverted to end uses of concern, including uses in thermal imaging weapon sights.

6. To overcome the U.S. Government's concerns, FLIR repeatedly represented to U.S. Government officials, both in the lead up to FLIR's submission of the request and while it was being considered, that FLIR had developed an innovative anti-tamper system known as a "handshake" requirement. FLIR stated that the UFPA by itself would be "effectively useless" because of anti-tamper protection features, including the "handshake encryption," that only allowed the UFPA to operate in conditions defined by FLIR thermal camera hardware. For example, the Department of Defense asked for more details from FLIR concerning the anti-tamper protection system, including to ensure that it could not be circumvented. In response, FLIR submitted a March 8, 2013 white paper making additional representations about the system and its potential effectiveness, making it appear as if the "handshake encryption" was a developed feature, stating that "[t]he . . . UFPA can only be operated when integrated with the FLIR . . . camera electronics" and that the anti-tamper protections "addressed the need to prevent diversion of the UFPA[.]"

7. FLIR's representations and statements were intended to influence U.S. Government positions on the determination, including the Department of Commerce's position.

When BIS asked FLIR on October 16, 2013 to verify that FLIR "has designed the . . . focal plane array so that it can only be operated when integrated with the . . . [FLIR] camera electronics[,]" FLIR, through a senior Global Trade Compliance representative, affirmed that the statement was accurate.

8. In fact, contrary to FLIR's representations in its communications with the U.S. Government, a functional "handshake encryption" anti-tamper protection was never successfully developed by FLIR nor added as a feature of the UFPA at issue. After the 2013 CJ issued, FLIR produced cameras incorporating the UFPA without the "handshake encryption."

9. In making the incomplete or inaccurate representations, statements, or certifications as alleged above, in the course of an action subject to the Regulations, or for the purpose of or in connection with effecting an export, reexport or other activity subject to the Regulations, FLIR violated Section 764.2(g) of the Regulations.

Charge 2 15 C.F.R. § 764.2(g) – Misrepresentation and concealment of facts

10. BIS re-alleges and incorporates herein Paragraphs 1-9 above.

11. FLIR also made incomplete or inaccurate representations, statements, or certifications to BIS and officials of other U.S. Government agencies concerning the end uses of the UFPA at issue while seeking and obtaining an official classification identifying the UFPA on the CCL for export control purposes.

12. While FLIR generally emphasized the commercial future of thermal imaging in presentations to the government, FLIR stated that the camera including the UFPA subject to the CJ request was developed in response to demand from the cell phone market for a thermal imager that could fit the existing camera socket of a mobile phone and solely to satisfy robust demand for such product in the commercial cell phone market. In the CJ request it submitted on April 7, 2013, FLIR stated in the opening summary that the UFPA was designed "specifically for insertion into commercial smartphones" and that the UFPA's "**technical characteristics and performance reflect its commercial-only focus, commercial heritage, and applications that are non-threatening to national security.**" (Emphasis in original). Elsewhere in the CJ request and in other written materials presented to the government, FLIR made similar statements, and recognized the need to prevent diversion of the UFPA from the cell phone supply chain to uses other than insertion into smartphones.

13. In fact, FLIR knew that the UFPA would be inserted into products other than smartphones, because that was a part of the business and manufacturing strategy that FLIR had developed internally. FLIR had been contemplating other markets for the UFPA and related thermal imaging cameras since at least December 22, 2012. In

particular, FLIR identified in internal company presentations several other products that could adopt a camera made from the UFPA, as FLIR made the business case for the UFPA and plans to increase the volume of its production. However, FLIR did not disclose these plans in connection with the CJ request and classification determination, even in response to questions from the U.S. Government about what limits were in place to prevent use of the UFPA in military items such as weapon sights.

14. Despite its representations to the U.S. Government that the UFPA and related cameras were designed for the commercial smartphone market, FLIR developed internal company plans for military applications that could use cameras from the UFPAs in nano reconnaissance drones and set those plans in motion while the U.S. Government was still evaluating the CJ request and CCL classification. In September 2013, for example, FLIR brought a pre-production model of a thermal imaging camera incorporating the UFPA to a defense and security trade show in London, where FLIR worked with a Norwegian customer in the defense industry. After the CJ and related classification determination issued on December 4, 2013, the first sale by FLIR of cameras incorporating the UFPA was made not for the commercial smartphone market, but to that same customer for use in nano drones.

15. In making incomplete or inaccurate statements, or certifications in the course of an action subject to the Regulations, or for the purpose of or in connection with effecting an export, reexport or other activity subject to the Regulations, FLIR violated Section 764.2(g) of the Regulations.

WHEREAS, FLIR has reviewed the Proposed Charging Letter and is aware of the allegations made against it and the administrative sanctions that could be imposed against it if the allegations are found to be true;

WHEREAS, FLIR fully understands the terms of this Agreement and the Order ("Order") that the Assistant Secretary of Commerce for Export Enforcement will issue if he approves this Agreement as the final resolution of this matter;

WHEREAS, FLIR enters into this Agreement voluntarily and with full knowledge of its rights, after having consulted with counsel;

WHEREAS, FLIR states that no promises or representations have been made to it other than the agreements and considerations herein expressed;

WHEREAS, FLIR admits to the allegations contained in the Proposed Charging Letter; and

WHEREAS, FLIR agrees to be bound by the Order, if issued;

NOW THEREFORE, the Parties hereby agree, for purposes of this Settlement Agreement, as follows:

1. BIS has jurisdiction over FLIR, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.

2. The following sanctions shall be imposed against FLIR:

a. FLIR shall be assessed a civil penalty in the amount of $307,922, the payment of which shall be made to the U.S. Department of Commerce within 30 days of the date of the Order. Payment shall be made in the manner specified in the attached instructions.

b. FLIR shall complete two internal audits of its export controls compliance program. The results of the audits, including any relevant supporting materials, shall be submitted to the Department of Commerce, Bureau of Industry and Security, Office of Export Enforcement, Portland Resident Office, 1220 SW 3rd Avenue, Suite 1002, Portland, Oregon 97204. The first audit shall cover a period of no less than twelve (12) consecutive months immediately prior to the date of the Order, and the second audit shall cover a period of no less than twelve (12) consecutive months immediately after the date of the Order, and the related reports shall be due to the BIS Portland Resident Office no later than six (6) months and eighteen (18) months, respectively, from the date of the Order. Said audits shall be in substantial compliance with the Export Compliance Program

(ECP) sample audit module, and each audit shall include a comprehensive assessment of FLIR's compliance with the Regulations. The ECP sample audit module is available on the BIS website at https://www.bis.doc.gov/index.php/documents/pdfs/1641-ecp/file. In addition, where said audits identify actual or potential violations of the Regulations, FLIR shall promptly provide a detailed plan of corrective actions to be taken, and copies of the pertinent air waybills and other export control documents and supporting documentation related to the identified compliance concerns, to the BIS Portland Resident Office.

c. The full and timely payment of the civil penalty agreed to in Paragraph 2.a, above and the timely completion of the audit and submission of the audit results in Paragraph 2.b are hereby made conditions to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to FLIR. Failure to make full and timely payment of the civil penalty, or to complete the audits and submit the audit results, as set forth above, may result in the denial of all of FLIR's export privileges under the Regulations for one year from the date of the failure to make such payment or complete or submit such audit results.

3. Subject to the approval of this Agreement pursuant to Paragraph 8 hereof, FLIR hereby waives all rights to further procedural steps in this matter including, without limitation, any right to: (a) an administrative hearing regarding the allegations in any charging letter; (b) request a refund of any civil penalty paid pursuant to this Agreement and the Order, if issued; and (c) seek judicial review or otherwise contest the validity of

this Agreement or the Order, if issued. FLIR also waives and will not assert any Statute of Limitations defense, and the Statute of Limitations will be tolled, in connection with any violation of the Act or the Regulations arising out of the transactions identified in the Proposed Charging Letter or in connection with collection of the civil penalty or enforcement of this Agreement and the Order, if issued, from the date of the Order until the later of the date FLIR pays in full the civil penalty agreed to in Paragraph 2.a of this Agreement, or has completed the audits and submitted the audit results as agreed to in Paragraph 2.b of this Agreement.

4. In light of this Settlement Agreement and to finally resolve matters, FLIR shall not dispute or deny, directly or indirectly, the allegations contained in the Proposed Charging Letter or the Order or take any position contrary thereto in any public statement. The foregoing does not affect FLIR's testimonial obligations in any administrative or judicial proceeding, nor does it affect its right to take legal or factual positions in civil litigation or other civil proceedings in which the U.S. Department of Commerce is not a party.

5. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 2.a above, and completion of the audits and submission of the audit results as set forth in Paragraph 2.b above, BIS will not initiate any further administrative proceeding against FLIR in connection with any violation of the Regulations arising out of the matters specifically detailed in the Proposed Charging Letter.

6. This Agreement is for settlement purposes only. Therefore, if this Agreement is not accepted and the Order is not issued by the Assistant Secretary of Commerce for Export Enforcement pursuant to Section 766.18(a) of the Regulations, no

Party may use this Agreement in any administrative or judicial proceeding and the Parties shall not be bound by the terms contained in this Agreement in any subsequent administrative or judicial proceeding.

7. This Agreement constitutes and contains the entire agreement and understanding among the parties, and the terms of this Agreement or the Order, if issued, may not be varied or otherwise altered or affected by any agreement, understanding, representation, or interpretation not contained in this Agreement; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

8. This Agreement shall become binding on the Parties only if the Assistant Secretary of Commerce for Export Enforcement approves it by issuing the Order, which will have the same force and effect as a decision and order issued after a full administrative hearing on the record.

9. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public.

10. Each signatory affirms that he/she has authority to enter into this Settlement Agreement and to bind his/her respective party to the terms and conditions set forth herein.

11. If any provision of this Settlement Agreement is found to be unlawful, only the specific provision in question shall be affected and the other provisions shall remain in full force and effect.

BUREAU OF INDUSTRY AND SECURITY
U.S. DEPARTMENT OF COMMERCE

John Sonderman
Director of Export Enforcement

Date: 4/27/2021

FLIR Systems, Inc.

James J. Cannon
Chief Executive Officer

Date: 04/21/2021

Reviewed and approved by:

Counsel for FLIR

Date: 04/21/2021

PROPOSED CHARGING LETTER
CERTIFIED MAIL- RETURN RECEIPT REQUESTED

FLIR Systems Inc.
27700 SW Parkway Avenue
Wilsonville, OR 97070

Attn: James J. Cannon
Chief Executive Officer

Dear Mr. Cannon:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that FLIR Systems Inc., of Wilsonville, OR ("FLIR") violated the Export Administration Regulations (the "EAR" or "Regulations").[1] Specifically, BIS alleges that FLIR committed the following violations:

Charge 1 15 C.F.R. § 764.2(g) – Misrepresentation and concealment of facts

1. Between, on, or about November 7, 2012, and on or about December 4, 2013, FLIR made incomplete or inaccurate representations, statements, or certifications to BIS or officials of other agencies of the U.S. Government in the course of an action subject to the Regulations or for the purpose of or in connection with effecting an export, reexport or other activity subject to the EAR. Specifically, FLIR made incomplete or inaccurate representations, statements, or certifications to BIS and other U.S. Government agencies regarding a certain anti-tamper protection mechanism for a FLIR Uncooled Focal Plane Array ("the UFPA") while seeking

[1] The Regulations originally issued under the Export Administration Act of 1979, as amended, 50 U.S.C. §§ 4601-4623 (Supp. III 2015) ("the EAA"), which lapsed on August 21, 2001. The President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), continued the Regulations in full force and effect under the International Emergency Economic Powers Act, 50 U.S.C. § 1701, et seq. (2012) ("IEEPA"). On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, Title XVII, Subtitle B of Pub. L. 115-232, 132 Stat. 2208 ("ECRA"). While Section 1766 of ECRA repealed the provisions of the EAA (except for three sections which are inapplicable here), Section 1768 of ECRA provides, in pertinent part, that all rules and regulations that were made or issued under the EAA, including as continued in effect pursuant to IEEPA, and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2020). The violations alleged occurred in 2012-2013. The Regulations governing the violation at issue are found in the 2012-2013 versions of the Code of Federal Regulations, 15 C.F.R. Parts 730-774 (2012-2013). The 2020 Regulations govern the procedural aspects of this case.

and obtaining an official classification identifying the UFPA on the EAR's Commerce Control List ("CCL") for export control purposes.

2. Section 764.2(g) of the EAR states that no person may make any false or misleading representation, statement, or certification, or falsify or conceal any material fact, either directly to BIS or an official of any other United States agency, or indirectly through any other person in the course of an action subject to the EAR or for the purpose of or in connection with effecting an export, reexport, transfer (in-country) or other activity subject to the EAR. Further, all representations, statements, and certifications made by any person are deemed to be continuing in effect. Every person who has made any representation, statement, or certification must notify BIS, and any other relevant agency, in writing, of any change of any material fact or intention from that previously represented, stated, or certified, immediately upon receipt of any information that would lead a reasonably prudent person to know that a change of material fact or intention has occurred or may occur in the future.

3. FLIR's incomplete or inaccurate statements were made to the U.S. Government in preparation for and in support of an April 7, 2013 commodity jurisdiction ("CJ") request, through which FLIR sought a determination that the FLIR UFPA at issue was subject to the EAR, rather than the International Traffic in Arms Regulations ("ITAR"), 22 C.F.R. Parts 120-130, administered by the U.S. Department of State relating to defense articles and defense services on the U.S. Munitions List. The CJ determination that FLIR sought would include a formal classification identifying the Export Control Classification Number ("ECCN") for the UFPA on the CCL. At the time of the request, the U.S. Government had generally considered UFPAs to be defense articles designed for military use.

4. On December 4, 2013, the Department of State determined that the UFPA was subject to the jurisdiction of the Department of Commerce, after a review of the UFPA's technical characteristics and performance specifications by requisite agencies of the United States Government, including the Departments of Commerce and Defense. This determination included a Department of Commerce determination that the UFPA was classified under ECCN 6A002.a.3.f on the CCL, and represented the first time that the U.S. Government had officially recognized a UFPA like the one described by FLIR as an item subject to the EAR, rather than a defense article on the U.S. Munitions List. Several years after this CJ was issued, FLIR submitted a voluntary self-disclosure acknowledging inaccurate and incomplete statements related to the CJ, including as described below. The U.S. Government upheld the jurisdiction determination and commodity classification of the 2013 CJ on December 23, 2018, despite continued concerns about the original presentations by FLIR.

5. Starting with the earliest meetings between FLIR and the U.S. Government regarding the UFPA on or about November 7, 2012, and continuing while the CJ request and CCL classification were under consideration, U.S. Government officials expressed concerns over whether the UFPA contained sufficient safeguards to prevent it from being adapted and diverted to end uses of concern, including uses in thermal imaging weapon sights.

6. To overcome the U.S. Government's concerns, FLIR repeatedly represented to U.S. Government officials, both in the lead up to FLIR's submission of the request and while it was being considered, that FLIR had developed an innovative anti-tamper system known as a "handshake" requirement. FLIR stated that the UFPA by itself would be "effectively useless" because of anti-tamper protection features, including the "handshake encryption," that only allowed the UFPA to operate in conditions defined by FLIR thermal camera hardware. For example, the Department of Defense asked for more details from FLIR concerning the anti-tamper protection system, including to ensure that it could not be circumvented. In response, FLIR submitted a March 8, 2013 white paper making additional representations about the system and its potential effectiveness, making it appear as if the "handshake encryption" was a developed feature, stating that "[t]he . . . UFPA can only be operated when integrated with the FLIR . . . camera electronics" and that the anti-tamper protections "addressed the need to prevent diversion of the UFPA[.]"

7. FLIR's representations and statements were intended to influence U.S. Government positions on the determination, including the Department of Commerce's position. When BIS asked FLIR on October 16, 2013 to verify that FLIR "has designed the . . . focal plane array so that it can only be operated when integrated with the . . . [FLIR] camera electronics[,]" FLIR, through a senior Global Trade Compliance representative, affirmed that the statement was accurate.

8. In fact, contrary to FLIR's representations in its communications with the U.S. Government, a functional "handshake encryption" anti-tamper protection was never successfully developed by FLIR nor added as a feature of the UFPA at issue. After the 2013 CJ issued, FLIR produced cameras incorporating the UFPA without the "handshake encryption."

9. In making the incomplete or inaccurate representations, statements, or certifications as alleged above, in the course of an action subject to the Regulations, or for the purpose of or in connection with effecting an export, reexport or other activity subject to the Regulations, FLIR violated Section 764.2(g) of the Regulations.

Charge 2 15 C.F.R. § 764.2(g) – Misrepresentation and concealment of facts

10. BIS re-alleges and incorporates herein Paragraphs 1-9 above.

11. FLIR also made incomplete or inaccurate representations, statements, or certifications to BIS and officials of other U.S. Government agencies concerning the end uses of the UFPA at issue while seeking and obtaining an official classification identifying the UFPA on the CCL for export control purposes.

12. While FLIR generally emphasized the commercial future of thermal imaging in presentations to the government, FLIR stated that the camera including the UFPA subject to the CJ request was developed in response to demand from the cell phone market for a thermal imager that could fit the existing camera socket of a mobile phone and solely to satisfy robust demand for

such product in the commercial cell phone market. In the CJ request it submitted on April 7, 2013, FLIR stated in the opening summary that the UFPA was designed "specifically for insertion into commercial smartphones" and that the UFPA's "**technical characteristics and performance reflect its commercial-only focus, commercial heritage, and applications that are non-threatening to national security.**" (Emphasis in original). Elsewhere in the CJ request and in other written materials presented to the government, FLIR made similar statements, and recognized the need to prevent diversion of the UFPA from the cell phone supply chain to uses other than insertion into smartphones.

13. In fact, FLIR knew that the UFPA would be inserted into products other than smartphones, because that was a part of the business and manufacturing strategy that FLIR had developed internally. FLIR had been contemplating other markets for the UFPA and related thermal imaging cameras since at least December 22, 2012. In particular, FLIR identified in internal company presentations several other products that could adopt a camera made from the UFPA, as FLIR made the business case for the UFPA and plans to increase the volume of its production. However, FLIR did not disclose these plans in connection with the CJ request and classification determination, even in response to questions from the U.S. Government about what limits were in place to prevent use of the UFPA in military items such as weapon sights.

14. Despite its representations to the U.S. Government that the UFPA and related cameras were designed for the commercial smartphone market, FLIR developed internal company plans for military applications that could use cameras from the UFPAs in nano reconnaissance drones and set those plans in motion while the U.S. Government was still evaluating the CJ request and CCL classification. In September 2013, for example, FLIR brought a pre-production model of a thermal imaging camera incorporating the UFPA to a defense and security trade show in London, where FLIR worked with a Norwegian customer in the defense industry. After the CJ and related classification determination issued on December 4, 2013, the first sale by FLIR of cameras incorporating the UFPA was made not for the commercial smartphone market, but to that same customer for use in nano drones.

15. In making incomplete or inaccurate statements, or certifications in the course of an action subject to the Regulations, or for the purpose of or in connection with effecting an export, reexport or other activity subject to the Regulations, FLIR violated Section 764.2(g) of the Regulations.

* * * * *

Accordingly, FLIR is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including, but not limited to any or all of the following:

- The maximum civil penalty allowed by law of up to the greater of $307,922 per violation,[2] or twice the value of the transaction that is the basis of the violation;[3]

- Denial of export privileges; and/or

- Exclusion from practice before BIS; and/or.

- Any other liability, sanction, or penalty available under law.

If FLIR fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. See 15 C.F.R. §§ 766.6 and 766.7. If FLIR defaults, the Administrative Law Judge may find the charges alleged in this letter are true without a hearing or further notice to FLIR. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty for the charges in this letter.

FLIR is further notified that it is entitled to an agency hearing on the record if FLIR files a written demand for one with its answer. See 15 C.F.R. § 766.6. FLIR is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. See 15 C.F.R. §§ 766.3(a) and 766.4. The Regulations provide for settlement without a hearing. See 15 C.F.R. § 766.18. Should FLIR have a proposal to settle this case, FLIR should transmit it to the attorney representing BIS named below.

FLIR is further notified that under the Small Business Regulatory Enforcement Flexibility Act, FLIR may be eligible for assistance from the Office of the National Ombudsman of the Small Business Administration in this matter. To determine eligibility and get more information, please see: http://www.sba.gov/ombudsman/.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, your answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

[2] See 15 C.F.R. § 6.4(b)(4). This amount is subject to annual increases pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Sec. 701 of Public Law 114-74, enacted on November 2, 2015.

[3] See International Emergency Economic Powers Enhancement Act of 2007, Pub. L. No. 110-96, 121 Stat. 1011 (2007).

In addition, a copy of FLIR's answer must be served on BIS at the following address:

Office of Chief Counsel for Industry and Security
Attention: Charles Wall
Room H-3839
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Charles Wall is the attorney representing BIS in this case; any communications that FLIR may wish to have concerning this matter should occur through him. Mr. Wall may be contacted by telephone at (202) 482-1232.

Sincerely,

John Sonderman
Director
Office of Export Enforcement