UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

E&M Computing Ltd.
6 Ha'chilazon Street
Ramat-Gan 52522
Israel

DRAFT

Attn: *Shraga Shahak*
Managing Director

Dear Mr. Shahak:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that E&M Computing Ltd ("E&M") violated the Export Administration Regulations (the "Regulations"),' which are issued under the authority of the Export Administration Act of 1979 (the "Act"),[2] on 16 occasions. Specifically, BIS charges that E&M committed the following violations:

1. Charges Involving Transactions with the SORE0 Nuclear Research Center

a. *First Transaction - Upgrade of a Server to Over 2,000 MTOPs*

Charge 1 (15 C.F.R §764.2(b) - Causing an Export of Computer Equipment without the Required BIS License)

On or about May 29, 1999, E&M caused an act prohibited by the Regulations, the exporting of computer equipment without the required BIS license. Specifically, E&M caused the export of three 250

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2002). The violations charged occurred in 1999 and 2000. The Regulations governing the violations at issue are found in the 1999 and 2000 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999-2000)). The 1999 and 2000 Regulations are substantially the same as the 2002 Regulations, which govern the procedural aspects of the case.

[2] 50 U.S.C. app. §§2401- 2420 (2000). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1707 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222, which has been extended by a Presidential Notice of August 14, 2002 (67 *Fed. Reg.* 159 (August 16, 2002)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: *http://w3.access.gpo.gov/bis/.*

b. *Second Transaction - Installation of an Ultra 5 Workstation*

Charge 5 (15 C.F.R. §764.2(b)) - Causing an Export of a High Performance Computer without the Required BIS License)

On or about November 12, 1999, E&M caused an act prohibited by the Regulations, the exporting of an HPC to a nuclear activity described in Section 744.2(a) of the Regulations without the license required by the Regulations. Specifically, E&M caused the export of a Sun Ultra 5 workstation, an item subject to ECCN 4A994, from the United States to Israel for installation at SOREQ without the required BIS license in violation of Section 744.2 of the Regulations. By causing an export that violated the Regulations, E&M committed one violation of Section 764.2(b) of the. Regulations.

Charge 6 (15 C.F.R §764.2(e)) - Selling OK Loaning a High Performance Computer with Knowledge that a Violation of the Regulations Would Occur)

On or about January 4, 2000, E&M loaned or sold the HPC described in Charge 5 to SOREQ with knowledge that a violation of the Regulations would occur. Specifically, E&M loaned or sold the Ultra 5 workstation to SOREQ without a BIS license as required by Section 744.2 of the Regulations. E&M knew that a BIS license was required for the transaction and that one was not obtained. By loaning or selling the HPC with knowledge that a violation would occur, E&M committed one violation of Section 764.2(e) of the Regulations.

Charge 7 (15 C.F.R §764.2(g)(1) - Concealing a Material Fact in connection with the Submission of an Export License Application)

On or about January 28, 2000, in connection with the loaning or selling of the Ultra 5 workstation to SOREQ referenced in Charge 6, E&M caused a U.S. exporter to file a license application with BIS that concealed a material fact. Pursuant to an order from E&M, on or about January 28, 2000, a U.S. exporter 'filed a license application with BIS that represented the Ultra 5 workstation identified in the license application would be installed at SOREQ. E&M did not inform the U.S. exporter and the license application did not disclose that E&M had previously installed an Ultra 5 workstation at SOREQ. By' causing a license application that concealed a material fact to be submitted to BIS, E&M committed one violation of Section 764.2(g)(1) of the Regulations.

Charge 8 (15 C.F.R. §764.2(h)) - Removing a High Performance Computer with Intent to Evade the Regulations)

In connection with the unauthorized export referenced in Charge 5, E&M took actions to evade the Regulations." Specifically, on or about October 15, 2000, after learning that BIS officials would conduct a post shipment verification, E&M removed the Ultra 5 workstation that it had installed at SOREQ without the required BIS license. The workstation was removed so that the post shipment verification would not discover the unauthorized transaction. By removing the Ultra 5 workstation in an attempt to conceal the unauthorized transaction, E&M committed one violation of Section 764.2(h) of the Regulations.

Charge 9 (15 **C.F.R. §764.2(h)) - Removing a High Performance Computer with Intent to Evade the Regulations)**

In connection with the unauthorized export referenced in Charge 5, E&M took actions to evade the Regulations. Specifically, on or about May 24, 2000, in accordance with the terms of a BIS license, a U.S. exporter exported an Ultra 5 workstation to E&M for installation at SOREQ. On or about May 31, 2000, E&M installed the Ultra 5 workstation licensed for SOREQ at a different end-user in Israel, Orsus Solutions. Then, on or about October 15, 2000, after learning that BIS officials would conduct a post shipment verification, E&M removed the Ultra 5 workstation at Orsus Solutions so that the post shipment verification would not discover the unauthorized, action. By removing the Ultra 5 workstation in an attempt to conceal the unauthorized action, E&M committed one violation of Section 764.2(h) of the Regulations.

2. Charges Involving Transactions with Comverse Information Systems

Charge 10 **(15 C.F.R §764.2(b) - Causing an Export of a High Performance Computer without the Required BIS License)**

On or about February 10, 1999, E&M caused an act prohibited by the Regulations, the exporting of an HPC without the required license. Specifically, E&M caused the export of an E4500 server with two 400 mhz CPUs from the United States to Israel with the intent to upgrade the HPC to over 2,000 MTOPs before installing it at Comverse Information Systems, Limited ("Cornverse") in Israel. Pursuant to Section 742.12 of the Regulations, U.S. Government authorization was required to export an HPC of over 2,000 MTOPs to Israel. The HPC, as upgraded, was an item subject to ECCN 4A003. By causing an export that violated the Regulations, E&M committed one violation of Section 764.2(b) of the Regulations.

Charge 11 **(15 C.F.R §764.2(e) - Selling or Loaning A High Performance Computer Knowing that a Violation of the Regulations Would Occur)**

In connection with the unauthorized export referenced in Charge 10, E&M loaned or sold an HPC to Comverse with knowledge that a violation of the Regulations would occur. Specifically, on or about February 28, 1999, E&M loaned or sold an E4500 server with an operating capability of over 2,000 MTOPs to Comverse without the required BIS license. This transaction occurred after E&M learned that a BIS license was required because the notice of the transaction pursuant to the National Defense Authorization Act ("NDAA") had been denied. By loaning or selling an HPC with knowledge that a violation of the Regulations would occur, E&M committed one violation of Section 764.2(e) of the Regulations.

Charge 12 **(15 C.F.R. §764.2(h)) - Ordering a High Performance Computer and Central Processing Units with Intent to Evade the Regulations)**

In connection with the unauthorized export referenced in Charge 10, E&M took actions to evade the Regulations. Specifically, on or about January 24, 1999, knowing that a BIS license was required to install an HPC with an operating capability of 3,300 MTOPS at Cornverse, E&M ordered an HPC with an operating capability of less than 2,000 from a U.S. exporter, upgraded the HPC to 3,300 MTOPs with CPUs from its own warehouse, and then installed the upgraded HPC at Comverse. These actions were done without the required BIS authorization. By ordering an HPC with less than 2,000 MTOPs and upgrading it

to over 2,000 MTOPs before installation at Comverse without the required BIS authorization, E&M committed one violation of Section 764.2(h) of the Regulations.

Charge 13 (15 C.F.R §764.2(g)(1) - Concealing a Material Fact in connection with the Submission of an NDAA Notice)

On or about April 4, 1999, in connection with the loaning or selling of the HPC referenced in Charge 10, E&M caused a U.S. exporter to file an NDAA notice with BIS that concealed amaterial fact. Based upon representations from E&M, a U.S. exporter filed an NDAA notice (Section 740.7(b)(5)) with BIS to upgrade an HPC at Comverse to 3,300 MTOPS. E&M did not inform the exporter and the NDAA notice did not disclose that the upgrade had already been performed by E&M. By causing an NDAA notice to be submitted to BIS that concealed a material fact, E&M committed one violation of Section 764.2(g)(l) of the Regulations.

3. Charges Involving a Transaction with ELTA Electronics Indus.

Charge 14 (15 C.F.R §764.2(b)) - Causing an Export of High Performance Computer Equipment without the Required U.S. Government Authorization)

On or about July 26, 1999, E&M caused an act prohibited by the Regulations, the exporting of HPC equipment without the required U.S. Government authorization. Specifically, E&M caused the export of a Sunfire Board and two 400 mhz CPUs, items subject to ECCN 4A994, from the United States to ELTA Electronics Industries ("ELTA") in Israel to upgrade an HPC at ELTA to over 2,000 MTOPS without the U.S. Government authorization required by Section 742.12 of the Regulations. By causing an export that violated the Regulations, E&M committed one violation of Section 764.2(b) of the Regulations.

Charge 15 (15 C.F.R §764.2(e) - Servicing A High Performance Computer Knowing that a Violation of the Regulations Would Occur)

In connection with the unauthorized export referenced in Charge 14, on or about June. 15, 1999, E&M serviced an HPC at ELTA with knowledge that a violation of the Regulations would occur. Specifically, E&M upgraded an HPC at ELTA to 3,300 MTOPS by installing two 400 mhz CPUs in the HPC without the required U.S. Government authorization in violation of Section 742.12 of the Regulations. E&M knew that a BIS license was required for this transaction. By servicing a HPC with knowledge that a violation of the Regulations would occur, E&M committed one violation of Section 764.2(e) of the Regulations.

Charge 16 (15 C.F.R. §764.2(g)(1) - Concealing a Material Fact in connection with the Submission of an NDAA Notice)

On or about September 16, 1999, in connection with the upgrading of the HPC at ELTA referenced in Charge 14, E&M caused a U.S. exporter to file an NDAA notice with BIS that concealed a material fact. Based upon representations made by E&M, a U.S. exporter filed an NDAA notice with BIS that sought authorization to upgrade an HPC at ELTA to 3,300 MTOPS. E&M did not inform the exporter and the NDAA notice did not disclose that E&M had previously performed the upgrade. By causing an NDAA

notice to be submitted to BIS that concealed a material fact, E&M committed one violation of Section 764.2(g)(1) of the Regulations

Accordingly, E&M 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 any or all of the following:

The maximum civil penalty allowed by law of $11,000 per violation;[3]

Denial of export privileges; and/or

Exclusion from practice before BIS.

If E&M 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. (Regulations, Sections 766.6 and 766.7). If E&M defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to E&M. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each charge in this letter.

E&M is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. (Regulations, Section 766.6). E&M is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should E&M have a proposal to settle this case, E&M or its representative should transmit the offer to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, E&M's 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 2 1202-4022

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

Chief Counsel for Industry and Security
Attention: Melissa B. Mannino
Room H-3839
United States Department of Commerce

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[3] See 1.5 C.F.R. §6.4(a)(2).

14th Street and Constitution Avenue, N. W.
Washington, D.C. 20230

Melissa B. Mannino is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through her. She may be contacted by telephone at (202) 482-5301.

Sincerely,

Mark D. Menefee
Director
Office of Export Enforcement

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

In the Matter of	)
	)
E&M Computing Ltd.	)
6 Ha'chilazon Street	)
Ramat-Gan 52522	)
Israel	)
	)
Respondent.	)
	)

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is made by and between Respondent, E&M Computing Ltd. ("E&M'), and the Bureau of Industry and Security, United States Department of Commerce ("BIS") (collectively referred to as "Parties"), pursuant to Section 766.1 S(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2003)) ('Regulations"),' issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act"),[2]

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations charged occurred in 1999 and 2000. The Regulations governing the violations at issue are found in the 1999 and 2000 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999-2000)). The 1999 and 2000 Regulations are substantially the same as the 2003 Regulations which govern the procedural aspects of this case.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1707 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20,200 1. Since August 2 1,200 1, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 14, 2002 (3 C.F.R., 2002 Comp. 306

WHEREAS, BIS has notified E&M of its intention to initiate an administrative proceeding against E&M, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a proposed charging letter to E&M that alleged that E&M committed 15 violations of the Regulations, specifically:

1. Charges Involving Transactions with the SORE0 Nuclear Research Center

a. *First Transaction - Upgrade of a Server to Over 2,000 MTOPs*

1. *One Violation of 1.5 C.F.R. §764.2(b) - Causing an Export of Computer Equipment without the Required BIS License:* On or about May 29, 1999, E&M caused the export of three 250 mhz CPUs (central processing units), items subject to export control classification number ("ECCN") 4A003, from the United States to Israel to upgrade a high performance computer ("HPC") to above 2,000 MTOPS (millions of theoretical operations per second) at the SOREQ Nuclear Research Center ("SOREQ") without the BIS license required by Section 742.12 of the Regulations.

2. *One Violation of 15 C.F.R. §764.2(e) - Servicing A High Performance Computer Knowing that a Violation of the Regulations Would Occur:* On or about May 3 1, 1999, E&M upgraded the operating capability of an HPC at SOREQ to over 2,000 MTOPS after it learned that BIS had denied a license application for the transaction. The upgrade violated Section 742.12 of the Regulations.

(2003)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: http://w3.access.gpo.gov/bis/.

3. *One Violation of 15 C.F.R. §764.2(h) - Ordering Central Processing Units with Intent to Evade the Regulations:* Ch or about April 30, 1999, E&M was informed by one U.S. Company that the BIS license application for the export of three 250 mhz CPUs to upgrade an HPC at SOREQ was denied. Then, on or about May 27, 1999, E&M ordered three 250 mhz CPUs of the same kind that it had previously ordered for the upgrade at SOREQ from a different U.S. Company. On or about May 31, 1999, E&M, without the required BIS license, installed those CPUs in an HPC at SOREQ increasing the operating capability of the HPC to over 2,000 MTOPS.

4. *One Violation of IS C.F.R. §764.2(h) - Removing Central Processing Units with Intent to Evade the Regulations: On* or about October 15, 2000, after learning that BIS officials would be conducting a post shipment verification, E&M removed the three 250 mhz CPUs that it had installed in an HPC at SOREQ without the required BIS license. The CPUs were removed so that the post shipment verification would not discover the unauthorized action.

b. *Second Transaction - Installation of an Ultra 5 Workstation*

5. *One Violation of 15 C. F. R. §764.2(b) - Causing an Export of a High Performance Computer without the Required BIS License:* On or about November 12, 1999, E&M caused the export of a Sun Ultra 5 workstation, an item subject to ECCN 4A994, from the United States to Israel for installation at SOREQ without the required BIS license in violation of Section 744.2 of the Regulations.

6. *One Violation of 15 C.F.R. §764.2(e) - Selling or Loaning a High Performance Computer with Knowledge that a Violation of the Regulations Would Occur:* On or about January 4, 2000, E&M loaned or sold the Ultra 5 workstation to SOREQ without a BIS license as required by Section 744.2 of the Regulations. E&M knew that a BIS license was required for the transaction and that one was not obtained.

7. *One Violation of 15 C.F.R. §764.2(g)(1) - Concealing a Material Fact in connection with the Submission of an Export License Application..* Pursuant to an order from E&M, on or about January 28, 2000, a U.S. exporter filed a license application with BIS that represented the Ultra 5 workstation identified in the license application would be installed at SOREQ. E&M did not inform the U.S. exporter and the license application did not disclose that E&M had previously installed an Ultra 5 workstation at SOREQ.

8. *One Violation of 15 C.F.R. §764.2(h) - Removing a High Performance Computer with Intent to Evade the Regulations:* On or about May 24, 2000, in accordance with the terms of a BIS license, a U.S. exporter exported an Ultra 5 workstation to E&M for installation at SOREQ. On or about May 31, 2000, E&M installed the Ultra 5 workstation licensed for SOREQ at a different end-user in Israel, Orsus Solutions. Then, on or about October 15, 2000, after learning that BIS officials would conduct a post shipment verification, E&M removed the Ultra 5 workstation at Orsus Solutions so that the post shipment verification would not discover the unauthorized action.

2. Charges Involving Transactions with Comverse Information Systems

9. *One Violation of 15 C.F.R. §764.2(b) - Causing an Export of a High Performance Computer without the Required BIS License:* On or about February 10, 1999, E&M caused the export of an E4500 server with two 400 mhz CPUs from the United States to Israel with the intent to upgrade the HPC to over 2,000 MTOPs before installing it at Comverse Information Systems, Limited ("Cornverse") in Israel. Pursuant to Section 742.12 of the Regulations, U.S. Government authorization was required to export an HPC of over 2,000 MTOPs to Israel. The HPC, as upgraded, was an item subject to ECCN 4A003.

10. *One Violation of 15 C.F.R. §764.2(e) - Selling or Loaning A High Performance Computer Knowing that a Violation of the Regulations Would Occur:* On or about February 28, 1999, E&M loaned or sold an E4500 server with an operating capability of over 2,000 MTOPs to Comverse without the required BIS license. This transaction occurred after E&M learned that a BIS license was required because the notice of the transaction pursuant to the National Defense Authorization Act ("NDAA") had been denied.

11. *One Violation of 15 C.F.R. §764.2(h) - Ordering a High Performance Computer and Central Processing Units with Intent to Evade the Regulations:* On or about January 24, 1999, knowing that a BIS license was required to install an HPC with an operating capability of 3,300 MTOPS at Comverse, E&M ordered an HPC with an operating capability of less than 2,000 MTOPS from a U.S. exporter, upgraded the HPC to 3,300 MTOPs with CPUs from its own warehouse, and then installed

the upgraded HPC at Comverse. These actions were done without the required BIS authorization.

12. *One Violation of 15 C.F.R. §764.2(g)(1) - Concealing a Material Fact in connection with the Submission of an NDAA Notice:* Based upon representations from E&M, on or about April 4, 1999, a U.S. exporter filed an NDAA notice (Section 740.7(b)(5)) with BIS to upgrade an HPC at Comverse to 3,300 MTOPS. E&M did not inform the exporter and the NDAA notice did not disclose that the upgrade had already been performed by E&M.

3. Charges Involving a Transaction with ELTA Electronics Indus.

13. *One Violation of 15 C.F.R. §764.2(b) - Causing an Export of High Performance Computer Equipment without the Required U.S. Government Authorization: On* or about July 26, 1999, E&M caused the export of a Sunfire Board and two 400 mhz CPUs, items subject to ECCN 4A994, from the United States to ELTA Electronics Industries ("ELTA") in Israel to upgrade an HPC at ELTA to over 2,000 MTOPS without the U.S. Government authorization required by Section 742.12 of the Regulations.

14. *One Violation of 15 C.F.R. §764.2(e) - Servicing A High Performance Computer Knowing that a Violation of the Regulations Would* Occur: On or about June 15, 1999, E&M upgraded an HPC at ELTA to 3,300 MTOPS by installing two 400 mhz CPUs in the HPC without the required U.S. Government authorization in violation of Section 742.12 of the Regulations. E&M knew that a BIS license was required for this transaction,

15. *One Violation of 15 C.F.R. §764.2(g)(1) - Concealing a Material Fact in connection with the Submission of an NDAA Notice:* Based upon representations made by E&M, on or about September 16, 1999, a U.S. exporter filed an NDAA notice with BIS that sought authorization to upgrade an HPC at ELTA to 3,300 MTOPS. E&M did not inform the exporter and the NDAA notice did not disclose that E&M had previously performed the upgrade.

WHEREAS, E&M has reviewed the proposed charging letter and is aware of the allegations made against it and the administrative sanctions which could be imposed against it if the allegations are found to be true;

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

WHEREAS, E&M enters into this Agreement voluntarily and with full knowledge of its rights;

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

WHEREAS, E&M neither admits nor denies the allegations contained in the proposed charging letter;

WHEREAS, E&M wishes to settle and dispose of all matters alleged in the proposed charging letter by entering into this Agreement; and

WHEREAS, E&M agrees to be bound by the Order, if entered;

NOW THEREFORE, the Parties hereby agree as follows:

1. BIS has jurisdiction over E&M, under the Regulations, in connection with the matters alleged in the proposed charging letter.

2. The following sanctions shall be imposed against E&M in complete settlement of the violations of the Regulations set forth in the proposed charging letter:

a. E&M shall be assessed a civil penalty in the amount of $165,000 which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of the Order.

b. The timely payment of the civil penalty agreed to in paragraph 2.a. is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to E&M. Failure to make timely payment of the civil penalty set forth above shall result in the denial of all of E&M's export privileges for a period of one year from the date of imposition of the penalty.

c. E&M, its successors or assigns, and, when acting for or on behalf of E&M, its officers, representatives, agents or employees ("denied persons") may not, for a period of three years from the date of entry of the Order, participate, directly or indirectly, in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

i. Applying for, obtaining, or using any license, License Exception, or export control document;

ii. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

iii. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

d. BIS agrees that, as authorized by Section 766.18(c) of the Regulations, the three year denial period set forth in paragraph 2.c. shall be suspended for a period of three years from the entry of the appropriate Order, and shall thereafter be waived, provided that during the period of suspension, E&M has committed no violation of the Act or any regulation, order or license issued thereunder, and, provided further that E&M has made timely payment of the $165,000 civil penalty assessed pursuant to this Agreement and the Order.

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

4. Upon entry of the Order and timely payment of the $165,000 civil penalty, BIS will not initiate any further administrative proceeding against E&M in connection with any violation of the Act or the Regulations arising out of the transactions identified in the proposed charging letter.

5. BIS will make the proposed charging letter, this Agreement, and the Order, if entered, available to the public.

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. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if entered, nor shall this 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 herein.

8. This Agreement shall become binding on BIS only if the Assistant Secretary of Commerce for Export Enforcement 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.

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

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

Mark D. Menefee
Director
Office of Export Enforcement

Date: 7/21/03

E&M COMPUTING LTD.

Shraga Shahak
Managing Director

E & M COMPUTING LTD.
6 HACHILAZON ST.
RAMAT-GAN 52522
ISRAEL

Date:

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

In the Matter of:	)
	)
E&M Computing Ltd.	)
6 Ha'chilazon Street	)
Ramat-Gan 52522	)
Israel	)
	)
Respondent.	)
	)

ORDER

The Bureau of Industry and Security, United States Department of Commerce ("BIS") having notified E&M Computing Ltd. ("E&M") of its intention to initiate an administrative proceeding against E&M pursuant to Section 766.3 of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2003)) ("Regulations"),' and Section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) ("Act"),

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The violations charged occurred in 1999 and 2000. The Regulations governing the violations at issue are found in the 1999 and 2000 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (1999-2000)). The 1999 and 2000 Regulations are substantially the same as the 2003 Regulations which govern the procedural aspects of this case.

[2] From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1707 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 2 1,200 1, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended by the Notice of August 7, 2003 (68 Fed. Reg. 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: http://w3.access.gpo.gov/bis/.

based on the proposed charging letter issued to E&M that alleged E&M committed 15 violations of the Regulations. Specifically, the charge are:

I. Charges Involving Transactions with the SORE0 Nuclear Research Center

a. *First Transaction - Upgrade **of** a Server to Over 2,000 MTOPs*

1. *One Violation **of** I.5 C.F.R. §764.2(b) - Causing an Export **of** Computer Equipment without the Required BIS License:* On or about May 29, 1999, E&M caused the export of three 250 mhz CPUs (central processing units), items subject to export control classification number ("ECCN") 4A003, from the United States to Israel to upgrade a high performance computer ("HPC") to above 2,000 MTOPS (millions of theoretical operations per second) at the SOREQ Nuclear Research Center ("SOREQ") without the BIS license required by Section 742.12 of the Regulations.

2. *One Violation **of** I.5 C.F.R. $764.2(e) - Servicing A High Performance Computer Knowing that a Violation of the Regulations Would Occur:* On or about May 3 1, 1999, E&M upgraded the operating capability of an HPC at SOREQ to over 2,000 MTOPS after it learned that BIS had denied a license application for the transaction. The upgrade violated Section 742.12 of the Regulations.

3. *One Violation **of** 1.5 C.F.R. §764.2(h) - Ordering Central Processing Units with Intent to Evade the Regulations:* On or about April 30, 1999, E&M was informed by one U.S. Company that the BIS license application for the export of three 250 mhz CPUs to upgrade an HPC at SOREQ was denied. Then, on or about May 27, 1999, E&M ordered three 250 mhz CPUs of the same kind that it had previously ordered for the upgrade at SOREQ from a different U.S. Company. On or about

May 3 1, 1999, E&M, without the required BIS license, installed those CPUs in an HPC at SOREQ increasing the operating capability of the HPC to over 2,000 MTOPS.

4. *One Violation **of** 15 C.F.R. §764.2(h) - Removing Central Processing Units with Intent to Evade the Regulations:* On or about October 15, 2000, after learning that BIS officials would be conducting a post shipment verification, E&M removed the three 250 mhz CPUs that it had installed in an HPC at SOREQ without the required BIS license. The CPUs were removed so that the post shipment verification would not discover the unauthorized action.

b. *Second Transaction - Installation **of** an Ultra 5 Workstation*

5. *One Violation **of** 1.5 C.F.R. §764.2(b) - Causing an Export **of** a High Performance Computer without the Required BIS License:* On or about November 12, 1999, E&M caused the export of a Sun Ultra 5 workstation, an item subject to ECCN 4A994, from the United States to Israel for installation at SOREQ without the required BIS license in violation of Section 744.2 of the Regulations.

6. *One Violation **of** 1.5 C.F.R. §764.2(e) - Selling or Loaning a High Performance Computer with Knowledge that a Violation **of** the Regulations Would Occur:* On or about January 4, 2000, E&M loaned or sold the Ultra 5 workstation to SOREQ without a BIS license as required by Section 744.2 of the Regulations. E&M knew that a BIS license was required for the transaction and that one was not obtained.

7. *One Violation of I.5 C.F.R. $764.2(g)(l) - Concealing a Material Fact in connection with the Submission of an Export License Application:* Pursuant to an order from E&M, on or about January 28, 2000, a U.S. exporter filed a license application with BIS that represented the Ultra 5 workstation identified in the license application that would be installed at SOREQ. E&M did not inform the U.S. exporter and the license application did not disclose that E&M had previously installed an Ultra 5 workstation at SOREQ.

8. *One Violation of I.5 C.F.R. §764.2(h) - Removing a High Performance Computer with Intent to Evade the Regulations:* On or about October 15, 2000, after learning that BIS officials would conduct a post shipment verification, E&M removed the Ultra 5 workstation that it had installed at SOREQ without the required BIS license. The workstation was removed so that the post shipment verification would not discover the unauthorized transaction.

II. Charges Involving Transactions with Comverse Information Systems

9. *One Violation of 15 C.F.R. §764.2(b) - Causing an Export of a High Performance Computer without the Required BIS License:* On or about February 10, 1999, E&M caused the export of an E4500 server with two 400 mhz CPUs fi-om the United States to Israel with the intent to upgrade the HPC to over 2,000 MTOPs before installing it at Comverse Information Systems, Limited ("Comverse") in Israel. Pursuant to Section 742.12 of the Regulations, U.S. Government authorization was required to export an HPC of over 2,000 MTOPs to Israel. The HPC, as upgraded, was an item subject to ECCN 4A003.

10. *One Violation **of** 15 C.F.R. $764.2(e) - Selling or Loaning A High Performance Computer Knowing that a Violation **of** the Regulations Would Occur:* On or about February 28, 1999, E&M loaned or sold an E4500 server with an operating capability of over 2,000 MTOPs to Comverse without the required BIS license. This transaction occurred after E&M learned that a BIS license was required because the notice of the transaction pursuant to the National Defense Authorization Act of Fiscal Year 1998 ("NDAA") had been denied.

11. *One Violation **of** 15 C.F.R. §764.2(h) - Ordering a High Performance Computer and Central Processing Units with Intent to Evade the Regulations:* On or about January 24, 1999, knowing that a BIS license was required to install an HPC with an operating capability of 3,300 MTOPS at Cornverse, E&M ordered an HPC with an operating capability of less than 2,000 MTOPS from a U.S. exporter, upgraded the HPC to 3,300 MTOPs with CPUs from its own warehouse, and then installed the upgraded HPC at Cornverse. These actions were done without the required BIS authorization.

12. *One Violation **of** 15 C.F.R. §764.2(g)(1) - Concealing a Material Fact in connection with the Submission **of an** NDAA **Notice:*** Based upon representations from E&M, on or about April 4, 1999, a U.S. exporter filed an NDAA notice (Section 740.7(b)(5)) with BIS to upgrade an HPC at Comverse to 3,300 MTOPS. E&M did not inform the exporter and the NDAA notice did not disclose that the upgrade had already been performed by E&M.

III. Charges Involving a Transaction with ELTA Electronics Indus.

13. *One Violation **of** 15 C.F.R. §764.2(b) - Causing an Export **of** High Performance Computer Equipment without the Required U.S. Government Authorization:* On

or about July 26, 1999, E&M caused the export of a Sunfire Board and two 400 mhz CPUs, items subject to ECCN 4A994, from the United States to ELTA Electronics Industries ("ELTA") in Israel to upgrade an HPC at ELTA to over 2,000 MTOPS without the U.S. Government authorization required by Section 742.12 of the Regulations.

14. *One Violation of 15 C.F.R. §764.2(e) - Servicing A High Performance Computer Knowing that a Violation of the Regulations Would Occur:* On or about June 15, 1999, E&M upgraded an HPC at ELTA to 3,300 MTOPS by installing two 400 mhz CPUs in the HPC without the required U.S. Government authorization in violation of Section 742.12 of the Regulations. E&M knew that a BIS license was required for this transaction.

15. *One Violation of 15 C.F.R. §764.2(g)(1) - Concealing a Material Fact in connection with the Submission of an NDAA Notice:* Based upon representations made by E&M, on or about September 16, 1999, a U.S. exporter filed an NDAA notice with BIS that sought authorization to upgrade an HPC at ELTA to 3,300 MTOPS. E&M did not inform the exporter and the NDAA notice did not disclose that E&M had previously performed the upgrade.

BIS and E&M having 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 the terms of the Settlement Agreement having been approved by me;

IT IS THEREFORE ORDERED:

FIRST, that a civil penalty of $165,000 is assessed against E&M, which shall be paid to the U.S. Department of Commerce within 30 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions.

SECOND, that, pursuant to the Debt Collection Act of 1982, as amended (31 U.S.C. §§ 3701-3720E (2000)), 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, E&M 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, that the timely payment of the civil penalty set forth above is hereby made a condition to the granting, restoration, or continuing validity of any export license, license exception, permission, or privilege granted, or to be granted, to E&M. Accordingly, if E&M should fail to pay the civil penalty in a timely manner, the undersigned may enter an Order denying all of E&M's export privileges for a period of one year from the date of entry of this Order.

FOURTH, that for a period of three years from the date of this Order, E&M Computing Ltd., 6 Ha'chilazon Street, Ramat-Gan 52522, Israel, its successors or assigns, and when acting for or on behalf of E&M, its officers, representatives, agents or employees ("denied person") may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

FIFTH, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or

controlled by the denied person, or service any item, of whatever origin, that is owned, possessed or controlled by the denied person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

SIXTH, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to E&M by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

SEVENTH, that this Order does not prohibit any export, reexport, or other transaction subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

EIGHTH, that, as authorized by Section 766.18(c) of the Regulations, the denial period set forth above shall be suspended in its entirety for three years from the date of this Order, and shall thereafter be waived, provided that during the period of suspension, E&M has not committed any violation of the Act or any regulation, order or license issued thereunder, and, provided further, that E&M has made timely payment of the civil penalty as provided herein.

NINTH, that 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.

for Lisa A. Prager
Acting Assistant Secretary of Commerce
for Export Enforcement

Entered this 18th day of August 2003.

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