

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

In the Matter of:

Zhongxing Telecommunications Equipment
Corporation
ZTE Plaza, Keji Road South
Hi-Tech Industrial Park
Nanshan District, Shenzhen
China

ZTE Kangxun Telecommunications Ltd.
2/3 Floor, Suite A, Zte Communication Mansion
Keji (S) Road
Hi-New Shenzhen, 518057
China

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made by and between Zhongxing Telecommunications Equipment Corporation, of Shenzhen, China (“ZTE Corporation”) and ZTE Kangxun Telecommunications Ltd. of Hi-New Shenzhen, China (“ZTE Kangxun”) (collectively, “ZTE”), 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 issued pursuant to the Export Administration Act of 1979, as amended (the “Act”).²

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2016). The charged violations occurred in 2010-2016. The Regulations governing the violations at issue are found in the 2010-2016 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774). The 2016 Regulations set forth the procedures that apply to this matter.

² 50 U.S.C. §§ 4601-4623 (Supp. III 2015) (available at <http://uscode.house.gov>). Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13,222 of August 17, 2001 (3 C.F.R., 2001 Comp. 783 (2002)), as extended most recently by the Notice of August 4, 2016 (81 Fed. Reg. 52,587 (August 8, 2016)), has continued the Regulations in effect under the

WHEREAS, BIS has notified ZTE of its intentions to initiate an administrative proceeding against ZTE, pursuant to the Act and the Regulations;

WHEREAS, BIS has issued a Proposed Charging Letter to ZTE, which is attached hereto and incorporated herein, that alleges that ZTE committed 380 violations of the Regulations.

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

WHEREAS, the Parties enter into this Agreement having taken into consideration the plea agreement entered between the ZTE Corporation and the U.S. Attorney’s Office for the Northern District of Texas and the United States Department of Justice, National Security Division (collectively, the “Department of Justice”) related to this matter (“the plea agreement”), and the settlement agreement entered into between ZTE Corporation and the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) related to this matter (“the OFAC settlement agreement”);

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

WHEREAS, ZTE was added to the Entity List on March 8, 2016;

WHEREAS, upon execution of this Agreement, the plea agreement, and the OFAC settlement agreement, BIS will recommend that ZTE be removed from the Entity List, conditioned on court approval of the plea agreement and entry of the plea and approval of this Agreement by the Assistant Secretary of Commerce for Export Enforcement and his/her issuance of a corresponding Order ("the Order"); and

WHEREAS, ZTE 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 ZTE, under the Regulations, in connection with the matters alleged in the Proposed Charging Letter.
2. ZTE admits each of the allegations contained and the violations alleged in the Proposed Charging Letter.
3. The following sanctions shall be imposed against ZTE:

- a. ZTE shall be assessed a civil penalty by BIS in the amount of \$661,000,000. The payment of \$361,000,000 shall be made to the U.S.

Department of Commerce within 60 days of the date of the Order. Payment shall be made in the manner specified in the attached instructions. Payment of the remaining \$300,000,000 shall be suspended for a probationary period of seven years from the date of the Order, and thereafter shall be waived, provided that during this seven-year probationary period under the Order: ZTE has timely paid

\$361,000,000 to the Department of Commerce as set forth above, has ensured that all records required to be maintained or retained under the Regulations are stored in or fully accessible from the United States, has fully and timely complied with the audit and reporting requirements set forth in this Agreement and the Order, and has otherwise complied with the provisions of this Agreement and the Order; has committed no other violation of the Act or the Regulations or any order, license or authorization issued thereunder; has paid a criminal fine and a forfeiture money judgment totaling at least \$430,488,798, and has otherwise complied with the terms of the plea agreement between ZTE and the Department of Justice and any criminal sentence imposed in the criminal proceeding; and has complied with the settlement agreement between ZTE and OFAC, including payment of a civil penalty to OFAC of \$100,871,266. If ZTE fails to comply with any of these probationary conditions, the \$300,000,000 suspended portion of the BIS civil penalty may immediately become due and owing in full.

b. ZTE shall complete and submit six audit reports of its compliance with U.S. export control laws, with respect to all exports, reexports, or transfers (in-country) that are subject to the Regulations, as further set forth in subparagraphs (i)-(vii) below.

(i) ZTE shall hire an unaffiliated third party consultant with expertise in U.S. export control laws (“independent compliance auditor”) to conduct the external audits of its compliance with U.S. export control laws (including recordkeeping requirements), with respect to all exports, reexports, or transfers (in-country) that are subject to the Regulations. During the three-year

term of the independent compliance monitor described in the plea agreement, ZTE shall retain the same person to serve as the independent compliance auditor in connection with this Agreement and the Order, if issued. Thereafter, no less than 120 days before the end of the compliance monitor's three-year term under the plea agreement, ZTE shall propose to BIS three candidates to serve as the independent compliance auditor with regard to the remaining three annual audits. BIS retains the right, in its sole discretion, to accept or reject those candidates proposed by ZTE.

(ii) The audits required under this Agreement and the Order shall be in substantial compliance with the Export Management and Compliance Program sample audit module (currently available on the BIS web site at <https://www.bis.doc.gov/index.php/forms-documents/pdfs/1641-ecp/file>), and shall include an assessment of ZTE's compliance with the Regulations (including, but not limited to, the recordkeeping and retention requirements set forth in Part 762 of the Regulations) and other U.S. export control laws, as well as compliance with the terms of Paragraph 3.d of this Agreement. 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, 225 E. John Carpenter Freeway, Suite 820, Irving, TX 75062 ("BIS Dallas Field Office").

(iii) The first three audit reports under this Agreement and the Order shall be satisfied through the timely completion and contemporaneous transmission to the BIS Dallas Field Office of a copy of the

reports required under the plea agreement, if the reports are performed and completed in accordance with the terms of the plea agreement and subparagraph (ii) above. The remaining three audits shall cover successive 12-month periods following the end of the three-year term of the compliance monitor under the plea agreement, and the corresponding audit report shall be completed and submitted to the BIS Dallas Field Office no later than two months after the end of the 12-month period that is covered by the audit. These audit reports shall include a certification to BIS, executed under penalty of perjury, from the chief executive officer and chief legal officer of ZTE that to the best of their knowledge, after reasonable inquiry, ZTE and its subsidiaries and affiliates are in compliance with the terms of this Agreement and the Order, including the compliance program obligations set forth in Paragraph 3.d(v) below. In addition, where said audit identifies actual or potential violations of the Regulations, ZTE shall promptly provide copies of all related export control documents and other pertinent documentation to the BIS Dallas Field Office. Any disclosure by ZTE to the independent compliance auditor concerning export control violations shall not relieve ZTE of its obligation to disclose truthfully such matters to BIS pursuant to this Agreement or the Order.

(iv) Should the independent compliance auditor, during the course of his or her engagement, discover credible evidence that potentially unlawful transactions were not reported under applicable export control laws, the independent compliance auditor shall promptly report such conduct to ZTE's general counsel or chief legal officer for further investigation, unless the

independent compliance auditor believes, in the exercise of his or her discretion, that such disclosure should be made directly to BIS. If the independent compliance auditor refers the matter only to ZTE's general counsel or chief legal officer, that ZTE official shall promptly report the same to BIS and contemporaneously notify the independent compliance auditor that such report has been made. If ZTE fails to make disclosure to BIS within fourteen (14) business days of the independent compliance auditor's report of such conduct to ZTE, the independent compliance auditor shall independently disclose his or her findings to BIS.

(v) Further, in the event that ZTE, or any entity or person working directly or indirectly for ZTE, refuses to provide information necessary for the performance of the independent compliance auditor's responsibilities, the independent compliance auditor shall promptly disclose that fact to BIS. ZTE shall not take any action to retaliate against the independent compliance auditor for any such disclosures or for any other reason.

(vi) ZTE agrees that it will not employ or be affiliated with the independent compliance auditor for a period of not less than two years from the date the independent compliance auditor's work has ended. The independent compliance auditor will not serve or function as an employee or agent of ZTE (or of BIS), or as legal counsel to ZTE. No attorney-client relationship shall be formed between ZTE and the independent compliance auditor in connection with the required audits or audit reports or otherwise in connection with this Agreement or the Order. No documents or information

created, generated, or produced by the independent compliance auditor will be considered privileged from disclosure to BIS or other U.S. federal government agencies, nor shall ZTE assert such a claim of privilege.

(vii) At least annually, and more frequently if appropriate, representatives of ZTE and BIS will meet together to discuss the consultancy and any suggestions, comments or proposals for improvement ZTE may wish to discuss with BIS.

c. ZTE will ensure that all records required to be kept or retained under the Regulations are stored in or fully accessible from the United States.

d. ZTE shall:

(i) allow the U.S. Government to verify ZTE's adherence to its export control compliance program and the EAR, including agreeing to end use verifications for prior and future shipments of items subject to the EAR in the PRC and third countries, through the end-use visit understanding between the U.S. Department of Commerce and the PRC Ministry of Commerce.

(ii) provide extensive training on applicable export control requirements to (a) its leadership, management, and employees and (b) the leadership, management and employees of its affiliates, subsidiaries, and other entities worldwide over which it has ownership or control.

(iii) inform its leadership, management, employees contractors, suppliers, and others who deal in items subject to the EAR that transfers of such items to Iran, North Korea, Syria, Sudan, and Cuba, including without limitation U.S.-origin items or non-U.S.-origin items containing more

than the applicable de minimis content by value as set forth in the EAR, are generally prohibited unless authorized by the EAR or the regulations administered by OFAC, or by the U.S. Government through the issuance of a license.

(iv) provide copies of the materials to be used for such training, dates for such training, and information about the locations where such training occurred to BIS on a quarterly basis until January 1, 2020.

(v) provide, and commits to adhere to, a comprehensive and updated best-in-class export control compliance program that transcends through all corporate levels of ZTE, its subsidiaries, and other entities worldwide over which it has ownership or control, including a statement of corporate policy of export control compliance from the chief executive officers of ZTE Corporation and ZTE Kangxun to ensure compliance with the EAR. It will be distributed no less than annually to all relevant employees of ZTE Corporation and ZTE Kangxun and their subsidiaries and affiliates.

e. The full and timely payment of the civil penalty agreed to in Paragraph 3.a, above, and full and timely compliance with each of the other probationary conditions set forth in Paragraph 3.a, 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 ZTE.

f. For a period of seven (7) years from the date of the Order, ZTE Corporation, with a last known address of ZTE Plaza, Keji Road South, Hi-Tech Industrial Park, Nanshan District, Shenzhen, China, and ZTE Kangxun, with a last known address of 2/3 Floor, Suite A, Zte Communication Mansion Keji (S) Road,

Hi-New Shenzhen, 518057 China, and when acting for or on their behalf, their successors, assigns, directors, officers, employees, representatives, or agents (hereinafter each a “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:

- 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.

g. BIS agrees that, as authorized by Section 766.18(c) of the Regulations, the denial period set forth in Paragraph 3.f shall be suspended during a probationary period of seven years under the Order, and shall thereafter be waived, provided that during this probationary period ZTE has made full and timely payment in accordance with Paragraph 3.a, above, and has otherwise

complied with each of the probationary conditions set forth in Paragraph 3.a. If ZTE does not fully and timely comply with any of the probationary conditions, then the suspension may be modified or revoked by BIS and a denial order including a seven-year denial period activated against ZTE from the date that it is determined that ZTE has failed to comply.

4. Subject to the approval of this Agreement pursuant to Paragraph 11 hereof, ZTE 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 issued), including, without limitation, any right to: (a) receive 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. ZTE 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 ZTE has completed compliance in full with all of the probationary conditions and other terms of this Agreement and the Order and has complied in full with the plea agreement and any sentence following entry of its criminal plea.

5. ZTE shall not take any action or make or permit to be made any public statement, directly or indirectly, denying the allegations in the Proposed Charging Letter, this Agreement, or the Order. ZTE agrees that if it or any of its direct or indirect

affiliates or subsidiaries issue a press release in connection with this agreement or the Order, ZTE shall first consult BIS and the Department of Justice to determine whether (a) the text of the release is true and accurate; and (b) BIS and the Department of Justice have no objection to the release. Statements made by ZTE at any press conference or other public speaking event shall be consistent with the approved press release.

6. During the period of the suspended denial order, ZTE shall continue to cooperate fully with BIS, the Department of Justice, and OFAC, including with regard to the production of documents and making witnesses available, in any and all matters concerning any act within the scope of or related to the conduct described in the Proposed Charging Letter or related to other potential violations of U.S. export control laws occurring during the period of suspended denial order, subject to applicable law and regulations. At the request of BIS, ZTE shall also cooperate fully with other domestic or foreign law enforcement authorities and agencies in any investigation of ZTE, its subsidiaries or affiliates, or any of its present and former officers, directors, employees, agents, and consultants, or any other party in any and all matters concerning any act within the scope of or related to the conduct described in the Proposed Charging Letter or relating to potential violations of U.S. export control laws that occur during the suspended denial order period. ZTE agrees that its cooperation shall include, but is not limited to, the following:

a. ZTE shall truthfully disclose, upon request, all factual information not protected by a valid claim of attorney-client privilege, work product doctrine protection, or People's Republic of China ("PRC") state secrets privilege with respect to its activities, those of its subsidiaries and affiliates, and those of its present and former

directors, officers, employees, agents, and consultants concerning all matters relating to the conduct described in the Proposed Charging Letter or relating to other potential violations of U.S. export control laws about which ZTE has any knowledge or about which BIS may inquire, including by third parties or other persons related or unrelated to ZTE. This obligation of truthful disclosure includes the obligation of ZTE to provide to BIS, upon request, any such non-privileged or non-protected document, record, or other tangible evidence, including producing translations of non-English documents. Further, if, in response to a request for documents from BIS, ZTE makes a claim of attorney-client privilege, work product doctrine protection, or PRC state secrets privilege, ZTE will provide in writing: (a) the number of documents pertaining to each claim(s); (b) a description of each document; (c) and, in the event of a claim for PRC state secrets privilege, confirmation that ZTE has promptly sought the PRC's authorization to release the relevant document(s). ZTE acknowledges and agrees that the types or categories of documents or information produced to BIS, to the Department of Justice or to OFAC, during the course of the investigation of this matter or otherwise relating to the allegations contained in the Proposed Charging Letter, including, but not limited to, contracts, purchase orders, invoices, letters of credit, credit advices, internal reports and memoranda, and emails and other correspondence related to the foregoing or similar documents or information, were determined by ZTE, based on the advice of local counsel, not to contain PRC state secrets, and were produced after the PRC Government did not object to the production.

b. ZTE shall continue to use its best efforts to make available for interview, deposition, or other sworn testimony, as requested or required by BIS and at

ZTE's expense, present or former officers, directors, employees, agents, and consultants concerning the conduct described in the Proposed Charging Letter or related to any potential violations of U.S. export control laws occurring during the suspended denial order period. This obligation includes, but is not limited to, providing sworn testimony in federal civil or administrative proceedings in addition to interviews with BIS or other U.S. law enforcement authorities, including testimony or information relating to the authenticity or admissibility of any documents or other evidence. Cooperation under this paragraph shall include, at the request of BIS, identification of witnesses who, to ZTE's knowledge, may have material information concerning the conduct described in the Proposed Charging Letter or related to any potential violations of U.S. export control laws occurring during the suspended denial order period.

c. ZTE shall notify BIS of credible evidence of any violations of U.S. export control laws occurring during the suspended denial order period committed by ZTE or any of its subsidiaries or affiliates worldwide. ZTE further agrees that it will provide the requisite notification to BIS of potential violations of U.S. export control laws promptly upon learning of the underlying credible evidence. ZTE waives all defenses based on issues germane to statute of limitations, venue, and any and all constitutional and non-jurisdictional defenses with respect to any civil or administrative prosecution of ZTE for violations of a U.S. export control law that is not time-barred on the date this Settlement Agreement is signed.

7. ZTE agrees that its obligations under this Agreement shall be binding upon any acquirer or successor in interest to ZTE or substantially all of ZTE's assets and liabilities or business. ZTE agrees that, in the event ZTE Corporation or ZTE Kangxun

merges with another entity, sells or transfers all or substantially all of its assets or operations, or sells or transfers a business division or segment that exports, reexports, or transfers (in-country) any items subject to the Regulations or engages in any other activities subject to the Regulations, during the seven-year suspended denial period under this Agreement, whether such sale is structured as a stock or asset sale, merger, or transfer, it shall include in any contract for sale, merger or transfer provisions binding the acquirer or any successor-in-interest thereto to the obligations described in this Agreement. ZTE expressly understands that Paragraph 10 of this Agreement shall not apply to any acquirer or successor entities unless and until such acquirer or successor formally adopts and accepts this Agreement.

8. ZTE agrees to waive (i) any claim by or on behalf of ZTE, whether asserted or unasserted, against BIS, the U.S. Department of Commerce, and/or its officials and employees arising out of the facts giving rise to the enforcement matter that resulted in this Agreement, including but not limited to BIS's investigation of the Proposed Charging Letter, and (ii) any possible legal objection to this Agreement or the Order at any future date.

9. ZTE waives all rights, whether asserted directly or by a representative, to request or receive from BIS and the U.S. Department of Commerce any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, 5 U.S.C. § 552, or the Privacy Act, 5 U.S.C. § 552(a).

10. BIS agrees that upon full and timely payment of the civil penalty as set forth in Paragraph 3.a, above, and full and timely compliance with each of the other

probationary conditions set forth in Paragraph 3.a, BIS will not initiate any further administrative proceeding against ZTE in connection with any violation of the Act or the Regulations arising out of the transactions specifically detailed in the Proposed Charging Letter or any violations truthfully and completely disclosed in writing by ZTE to BIS as part of this investigation during the time period from April 6, 2016, to the date ZTE signs this Agreement.

11. 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.

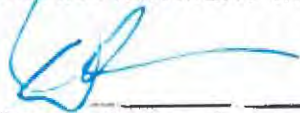
12. No agreement, understanding, representation or interpretation not contained in this Agreement may be used to vary or otherwise affect the terms of this Agreement or the Order, if issued; nor shall this Agreement serve to bind, constrain, or otherwise limit any action by any other agency or department of the U.S. Government with respect to the facts and circumstances addressed herein.

13. 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.

14. BIS will make the Proposed Charging Letter, this Agreement, and the Order, if issued, available to the public. BIS may also issue a press release relating to this matter, the contents of which will be determined by BIS in its discretion.

15. 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.

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



Douglas R. Hassebrock
Director of Export Enforcement

Date: March 7, 2017

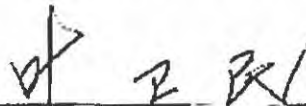
ZHONGXING TELECOMMUNICATIONS
EQUIPMENT CORPORATION



Zhao Xianming
Chairman and President

Date: March 2, 2017

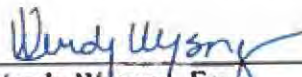
ZTE KANGXUN
TELECOMMUNICATIONS LTD.



Ye Weimin
Chairman

Date: March 02, 2017

Reviewed and approved by:



Wendy Wyson, Esq.
Clifford Chance LLP
Counsel for Zhongxing Telecommunications
Equipment Corporation and
ZTE Kangxun Telecommunications Ltd.

Date: March 2, 2017