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February 13, 2019

CHANCELLORS  
LABORATORY DIRECTOR WITHERELL

Dear Colleagues:

I'm writing to follow up on my letter of February 7, 2019, regarding foreign influence, to provide further guidance and recommendations for UC engagements with Chinese network equipment companies Huawei Technologies Co. ("Huawei") and ZTE Corp. ("ZTE").

Recent developments have increased the risk of University engagements with Huawei and ZTE. The federal government has heightened its focus on these companies and we expect the issuance of a Presidential Executive Order barring Chinese telecommunications equipment from United States wireless networks and/or barring private entities from using Huawei and ZTE technology, or placement of these companies on a restricted parties list. Pursuant to my letter of February 7, 2019, regarding foreign influence and the topline recommendation that campuses conduct due diligence on international agreements and funding, I ask that UC campuses take measures to assess their Huawei and ZTE relationships and their ability to remove or replace these companies' technologies in case of such government action.

I realize that some of you may have already taken action on this front. For example, UC Berkeley recently announced that it will not enter into or discuss new research collaborations with Huawei, nor will the campus seek or accept new research gifts from the company or its subsidiaries and affiliates.

Please share this memorandum with your Executive Vice Chancellors, Vice Chancellors of Administration, Vice Chancellors of Research, Chief Ethics and Compliance Officers, and other relevant leaders.

**Background**

In the past year, there has been increased government scrutiny and concern regarding Chinese network equipment companies Huawei and ZTE. Numerous congressional committees have focused on Chinese government influence over Huawei and ZTE as well as their capacity to influence the telecommunications infrastructure of the United States and to steal technology and conduct espionage. In June 2018, 26 members of Congress wrote Secretary of Education

Betsy DeVos stating that Huawei and ZTE were subject to foreign state influence and constituted a national security threat, and asked Secretary DeVos to inquire about universities' research partnerships with Huawei and ZTE. Secretary DeVos responded in July 2018 and produced information on Huawei gifts and grants to universities, reiterating that universities were required to self-report under the Higher Education Act ("HEA") on any foreign source grants or gifts exceeding \$250,000 individually or in the aggregate in any calendar year.<sup>1</sup>

In August 2018, Congress passed the National Defense Authorization Act ("NDAA"), which, among other things, prohibits executive agencies from taking certain actions with respect to any equipment, system or service that uses "covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any such system." "Executive agency" is broadly defined in the NDAA and encompasses all executive departments – including, for example, NIH, NSF, the Department of Transportation, and the Department of Energy – and not just the Department of Defense. The NDAA prohibits executive agencies from taking the following actions:

- Procuring such equipment, system or service for such uses
- Entering into contracts or extending or renewing any contracts with any entity employing such equipment, system or service for such uses
- Obligating or expending loan or grant funds for such uses

"Covered telecommunications equipment" includes telecommunications equipment produced by Huawei and ZTE as well as (for the purposes of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes) video surveillance and telecommunications equipment produced by other Chinese companies such as Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company or Dahua Technology Company. The prohibitions on procurement and contracts take effect in August 2019 and the prohibition on loans and grant funds takes effect in August 2020.

There is currently no legal prohibition against the University directly entering into telecommunications contracts with Huawei and ZTE or from receiving grant funds or gifts from such entities. The NDAA directly applies only to executive agencies, although it restricts such agencies' relationships with private entities. The government is not scheduled to issue regulations interpreting the NDAA prohibitions for several months and the prohibitions are not

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<sup>1</sup> Section 117 of the HEA requires all institutions of higher education that participate in Title IV to report when they "receive a gift from or enter into a contract with a foreign source, the value of which is \$250,000 or more, considered alone or in combination with all other gifts from or contracts with that foreign source within a calendar year." Although Secretary DeVos focused on this disclosure requirement, numerous other disclosure requirements could apply to grant and contract funding by Huawei and ZTE. For example, NIH is investigating whether, in their grant applications, researchers have fully disclosed (as "other support") foreign affiliations, significant financial interests in foreign entities or "foreign components" within the meaning of relevant regulations and rules. NIH's efforts, however, are currently related to researchers' disclosure of affiliations with foreign entities and programs generally, including Chinese universities and Thousand Talents Programs, rather than Huawei and ZTE specifically.

currently effective. Moreover, neither Huawei nor ZTE is currently listed on any government restricted parties list.

However, certain impending developments could significantly change legal or other risk considerations. First, media reports suggest that the White House is considering an executive order that would either bar Chinese telecommunications equipment from United States wireless networks or bar United States companies from using Huawei and ZTE technology. Such an executive order could be broader than the NDAA prohibitions and could take effect immediately or with little notice. Second, either Huawei or ZTE could at any time be placed on a government restricted parties list, which would prohibit the University from entering into equipment or service contracts and could prevent the University from accepting gift or grant funds from or engaging in other transactions with these entities. Third, in late January 2019, the Department of Justice unsealed two indictments against Huawei, the first for circumventing sanctions against Iran and the second for stealing robotic technologies from T-Mobile. Given this activity, we believe it is important that the University have a current inventory of our relationships with Huawei, ZTE and perhaps other such entities, and we may have little time to respond to federal requests for this information or to an executive order.

### **UCOP Guidance to Campuses**

Due to the evolving legal and risk landscape as to Huawei and ZTE, and in particular the possibility of an executive order or placement on a government restricted parties list, pursuant to my letter of February 7, 2019, and the first topline recommendation listed in Appendix 1, I request that campuses promptly take the following actions:

- Conduct a full and complete inventory as to (1) all equipment and services provided by Huawei and ZTE to your location; (2) any gift funds provided by Huawei or ZTE to your location during the past five years; (3) any grant funds or other research support provided by Huawei and ZTE to your location during the past five years; and (4) any other support provided by Huawei or ZTE to your location for any educational or research programs for the past five years. Such inventories should not be limited to equipment or services that would be prohibited by the NDAA, grant or gift funds that would be reportable under the HEA, or grant funds or research support that would fall under the fundamental research exclusion.
- Collect any and all contracts or agreements with Huawei and ZTE concerning any of the three categories set forth in the above point and analyze their expiration, termination, and renewal provisions so that expedited decisions can be made in the event of government action.
- Consider whether major or critical equipment or services currently provided by Huawei or ZTE (and in particular such equipment or services that could fall within the NDAA prohibitions) can be removed and replaced with equipment or services provided by

another entity, analyze risks and impediments to such removal and replacement, and formulate response plans in case of adverse government action.

I appreciate your prompt attention to this matter. Please send your inventories to Chief Compliance and Audit Officer Alexander Bustamante ([alexander.bustamante@ucop.edu](mailto:alexander.bustamante@ucop.edu)) **no later than March 15, 2019**. In the meantime, if you have any questions, please feel free to get in touch with Chief Compliance and Audit Officer Bustamante ([alexander.bustamante@ucop.edu](mailto:alexander.bustamante@ucop.edu)) or General Counsel Charles Robinson ([charles.robinson@ucop.edu](mailto:charles.robinson@ucop.edu)).

As we receive more information and clarity from the federal government, we will be sure to keep you apprised.

Yours very truly,



Janet Napolitano  
President

cc: Provost and Executive Vice President Brown  
Academic Senate Chair May  
Executive Vice President and Chief of Staff Nava  
Executive Vice President and Chief Financial Officer Brostrom  
Executive Vice President Stobo  
Senior Vice President and Chief Compliance & Audit Officer Bustamante  
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