



Export Controls Compliance Program Manual

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Texas A&M University - Texarkana
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<https://www.tamut.edu/academics/colleges-and-departments/Export-Control>

About | *Export control laws are complex, fact-specific, and analyzed on a case-by-case basis. Laws, regulations, rules, procedures, and lists specifying either who or what is considered export control sensitive and where export controls apply are subject to change.*

Basis of this Program Manual | *The intention of this program manual is to provide the basics in regards to export control information. This program manual should not be relied upon exclusively nor should it be considered or construed as legal advice. For questions, contact Texas A&M University - Texarkana Risk and Compliance.*

Acknowledgments | *Some portions of this manual are adapted from and based upon the Texas A&M AgriLife Export Control Compliance Program Manual and the Texas A&M University Commerce Export Control Compliance Program Manual.*

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abbreviations

BIS	Department of Commerce Bureau of Industry and Security
CCL	Commerce Control List
DFAR	Defense Federal Acquisition Regulation
EAR	Export Administration Regulations
ECCN	Export Control Classification Number
FAR	Federal Acquisition Regulations
FRE	Fundamental Research Exclusion
ITAR	International Traffic in Arms Regulations
MTA	Material Transfer Agreement
NDA	Non-Disclosure Agreement
OFAC	Department of Treasury Office of Foreign Assets Control
OGC	The Texas A&M University System Office of General Counsel
ORC	Texas A&M – Texarkana Office of Research Compliance
PI	Principal Investigator
RPS	Restricted Party Screenings
TAA	Technical Assistance Agreement
TAMUT	Texas A&M University - Texarkana
TAMUS	The Texas A&M University System
TCP	Technology Control Plan
U.S.	United States
USML	United States Munitions List

Texas A&M University – Texarkana

Export Control Procedures

Section 1.0 | A Commitment to Compliance

Texas A&M University - Texarkana (TAMUT) is committed to upholding the highest standard of ethical conduct and compliance with the legal obligations of the TAMUT components.

The export of certain items and information is regulated for reasons of national security, foreign policy, the prevention of the spread of weapons of mass destruction, and competitive trade reasons, and in accordance with The Texas A&M University System (A&M System) Policy 15.02, *Export Controls*, TAMUT is committed to operating in compliance with the United States (U.S.) export control laws and regulations including those implemented by the Department of Commerce through the Export Administration Regulations (EAR)¹ and the Department of State through the International Traffic in Arms Regulations (ITAR)², as well as those imposed by the Treasury Department through the Office of Foreign Assets Control (OFAC)³. Because of the complexity of the U.S. export control laws and regulations, potential export-controlled activities will be evaluated on a case-by-case basis.

All employees of TAMUT are ultimately individually responsible for ensuring compliance with U.S. export controls laws and regulations, as well as A&M System policies and regulations and TAMUT rules and procedures. It is imperative that TAMUT employees maintain open communication with their respective unit/department head and supervisor about these matters, and to recognize that export control laws and regulations apply broadly—not just to sponsored research projects or educational activities. This *TAMUT Export Controls Compliance Manual* (manual) is designed to assist TAMUT employees in the area of export control compliance. Additionally, this manual provides guidance in properly obtaining required administrative approvals while taking a proactive stance towards compliance with associated federal laws, and A&M System policies and regulations. To the extent this manual conflicts with A&M System Policy 15.02, *Export Controls Program Management*, or member rules and procedures, the A&M System Policy supersedes. Acronyms are defined in the Abbreviations section. For the purpose of this manual, definitions are contained in Appendix A.

TAMUT Office Research Compliance maintains a Web site with export control information and resources located at: <https://www.tamut.edu/academics/colleges-and-departments/Export-Control/index.html>. Questions regarding export controls should be directed to TAMUT Office of Research Compliance at 903.223.3003.



Office of Research Compliance
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¹ The Export Administration Regulations (EAR) 15 CFR 700-799 can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=d8c540d2aadb1243ca6b6b6394e63159&c=ecfr&tpl=/ecfrbrowse/Title15/15cfrv2_02.tpl#700.

² The International Traffic In Arms Regulations (ITAR) 22 CFR 120-130 can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=1d5acc710a0f2da23d05e09713900b6a&c=ecfr&tpl=/ecfrbrowse/Title22/22cfrv1_02.tpl.

³ The Office of Foreign Assets Control (OFAC) 31 CFR 500-599 can be found at http://www.ecfr.gov/cgi-bin/text-idx?SID=d8c540d2aadb1243ca6b6b6394e63159&c=ecfr&tpl=/ecfrbrowse/Title31/31cfrv3_02.tpl#500.

Section 2.0 | Key Parties Responsible for Export Control Compliance

2.1 INDIVIDUAL RESPONSIBILITY

All TAMUT employees, students, visiting scholars, and other persons retained by or working at or for the University must conduct their affairs in accordance with U.S. export control laws and regulations, while being aware of and responsible for export control implications associated with their work and institutional responsibilities. While compliance with all applicable legal requirements is imperative, it is equally important to maintain an open environment that welcomes the participation of individuals from around the world as part of the TAMUT mission. To maintain this balance, TAMUT personnel must be familiar with the U.S. export control laws and regulations—including important exclusions and exemptions, as they relate to their responsibilities. Depending upon the nature of their activities and/or job functions, TAMUT personnel may be required to participate in formal training as determined by the TAMUT Empowered Official(s) and/or the employees' supervisors.

Principal Investigators (PIs), with the assistance of TAMUT Office of Research Compliance and Risk and Compliance staff and other relevant TAMUT units, are responsible for compliance with all federal, A&M System, and TAMUT export control laws, regulations, policies, rules, and procedures in the conduct of their research or educational activities. Violation of the export control laws can directly affect PIs through potential fines, loss of research funding, and/or personal criminal liability. To meet this obligation PIs should:

- A. understand his or her export control obligations and participate in regular trainings to be able to identify export control issues;
- B. be aware of the export control indicators in Section 3 (but not limited to) below, and note such information on any internal compliance or assurance forms;
- C. determine—prior to initiation of research or educational activity—whether any information or technology involved in his or her research or educational activity is subject to export control laws or regulations;
- D. periodically review his or her research to ensure continuing compliance with export control laws and regulations;
- E. if undertaking an export-controlled project, brief those involved in the project of their export control obligations; and
- F. understand that any informal discussions, agreements, or understandings entered into with sponsors or entities can impose export control obligations on the PI, and may negate the opportunity to claim key exclusions such as the Fundamental Research Exclusion (FRE⁴).

TAMUT employees are to report suspected or known violations to the empowered official for TAMUT—the Research Compliance Officer. Additionally, TAMUT employees shall maintain their commitment to promoting a culture of compliance with all associated laws, regulations, policies, rules, and procedures.

⁴ As defined: Export Controls—and—National Security Decision Directive 189, the Exclusion applies to "basic and applied research in science and/or engineering at an institution of higher education in the U.S. where the resulting information either is ordinarily published and shared broadly in the scientific community, or has been or is about to be published."

2.2 EMPOWERED OFFICIAL

The Research Compliance Officer or designee will serve as the TAMUT empowered official for all purposes relating to applicable federal export control laws and regulations. The TAMUT empowered official is responsible for obtaining approvals required for compliance with export control laws, regulations, policies, rules, and procedures, as well as license application acquisitions. The TAMUT empowered official serves as TAMUT's representative and point of contact for export control matters involving TAMUT. The TAMUT empowered official is authorized to bind TAMUT in any proceedings before government agencies with export control responsibilities, and has final responsibility for compliance with export control laws and regulations. In the event of the reporting of a suspected violation, the TAMUT empowered official will investigate the suspected violation to the extent deemed necessary.

The TAMUT empowered official is the TAMUT official authorized to sign license applications and other authorizations required by export control laws and regulations on behalf of TAMUT, and to bind TAMUT in any proceedings before government agencies with export control responsibilities. All TAMUT interactions with government officials related to export control matters will be managed, made, and administered by the TAMUT empowered official as deemed appropriate. Any communications from government officials relating to TAMUT's export control compliance program should be forwarded to the TAMUT empowered official.

2.3 TAMUT OFFICE OF RESEARCH COMPLIANCE

TAMUT Office of Research Compliance, in cooperation with other appropriate offices, is responsible for directing and monitoring TAMUT's export control compliance program, recordkeeping, and implementing procedures and/or guidelines to comply with federal export control laws and regulations, including developing, implementing, and updating this manual.

When requested, TAMUT Office of Research Compliance will determine, or assist other offices and employees in export control assessments to determine compliance obligations with respect to TAMUT activities involving foreign persons or international activities under applicable export control laws and regulations, and to determine the applicability of the FRE or other exclusions provided by law. TAMUT Office of Research Compliance will also assist with and conduct Restricted Party and Technological Screening (RPS)⁵ and consult with the A&M System Office of General Counsel (OGC) on export control matters as appropriate.

All interactions with government officials on export control matters will be made, administered, and/or managed by the ORC as determined appropriate. Any communications from government officials relation to TAMUT's export control compliance program, its employees, research, facilities or equipment should be forwarded to ORC for handling.

TAMUT's sponsored research activities are administered by TAMU Office of Research Compliance (ORC) in accordance with established ORC procedures. A copy of the ORC Export Control Screening Procedures is attached as Appendix J.

ORC works closely with TAMUT Risk and Compliance, PIs, and A&M System Members as appropriate in identifying export control issues related to research, and to ensure that appropriate approvals are in place before the initiation of projects.

⁵ As defined : "determine[s] whether a person or entity is included on the Specially Designated Nationals and Blocked Persons List or any other list included in the screening software made available by the Division of Research."

2.4 TAMUT ADMINISTRATORS

All TAMUT employees with managerial or supervisory authority over foreign persons or projects involving controlled information or controlled physical items should view export control compliance as an important part of their day-to-day responsibilities. These individuals are responsible for overseeing export control compliance in their areas of administrative responsibility and for supporting TAMUT Office of Research Compliance in implementing the procedures set forth in this manual, and as otherwise deemed necessary by the empowered official or TAMUT Office of Research Compliance for export control compliance.

Section 3.0 | Identifying Export Control Concerns

3.1 EXPORT CONTROL RED FLAGS

The following—*but not limited to*—are indicators that an export control review should be conducted to ensure that no violations will occur:

- A. The results of research and educational activities conducted at TAMUT or by TAMUT employees are intended for military purposes or for other restricted end uses under EAR99.
- B. Foreign persons will have access to controlled physical items on campus or TAMUT property.
- C. Software that includes encryption features will be developed or purchased.
- D. TAMUT employees will export or travel abroad with research equipment, chemicals, biological materials, encrypted software, or controlled physical items; or travel abroad with laptops, cell phones, or PDAs containing controlled information.
- E. A proposed financial transaction will involve embargoed countries or entities, individuals located in embargoed countries, or who are on prohibited or restricted end-user lists, as determined by RPS.
- F. The sponsor requires pre-approval rights over publications or the participation of foreign persons.
- G. The project requires the shipping of equipment, chemicals, or biologicals to a foreign country.
- H. Other Red Flag Indicators: The BIS has posted a list of Red flag Indicators for Things to Look for in Export Control Transactions:
<http://www.bis.doc.gov/index.php/enforcement/oe/compliance/23-compliance-atraining/51-red-flag-indicators>.

3.2 RESTRICTED PARTY AND TECHNOLOGY SCREENING

A. Restricted Party Screening

The U.S. Department of Commerce, the U.S. Department of State, and the U.S. Department of Treasury—*along with various other government agencies*—maintain lists of prohibited and restricted end-users (Restricted Party Lists). If not wholly prohibited, licenses are required for exportation to these end-users, or for carrying out a transaction in which a prohibited or restricted end-user is involved.

TAMUT must screen individuals and entities as provided in this manual in order to ensure that TAMUT is not doing business with individuals or entities that have been debarred, denied export privileges, or are otherwise on one of the government restricted party lists.

TAMUT Office of Research Compliance has licensed export control compliance software (Visual Compliance) that permits authorized users to screen restricted party lists electronically. The export control compliance software performs restricted party screening against all relevant U.S. Government lists, including: OFAC Sanctions, BIS Denied Persons List, BIS Entity List and Unverified List, Department of State Arms Export Control Act Debarred Parties, Department of State Designated Terrorist Organizations, Department of State Nonproliferation Orders. Screening includes exact, fuzzy, and phonetic searches.

B. Technology Screening

The U.S. Department of Commerce, and the U.S. Department of State, along with various other government agencies control what technology, items, goods, services, etc. (technology) may be permissibly exported outside of U.S. territory. In order to ensure that TAMUT is in compliance with all export regulations, TAMUT must screen the technology⁶ that it intends to export. Screening of technology is accomplished using the same export control compliance software used to perform restricted party screening. This software allows for a search of the technology TAMUT plans to export via the EAR/Commerce Control List (CCL), and ITAR/U.S. Munitions List (USML). The export control compliance software will notify the screener if a cross-match is found on another listing and what applicable licenses may be required.

C. Returned Results (“Hits”)

TAMUT Office of Research Compliance will conduct screenings in accordance with their internal procedures. If there is a possible match of the party being screened with a party on a restricted party list (a “hit”), a secondary screening should be conducted using additional detailed information to confirm. If the hit cannot be ruled out, the possible match and the criteria used to determine the possible match will be forwarded to the Empowered Official in the ORC to make a determination. TAMUT Office of Research Compliance is responsible for maintaining records of its determinations, in accordance with Section 13, *Recordkeeping*.

Section 4.0 | *Research Activities, Material Transfers, and Non-Disclosure Agreements*

Most data and information involved in TAMUT research and educational activities could possibly be excluded from export control regulations under the ITAR or EAR based on several key provisions:

- A. the Public Domain Exclusion;
- B. the FRE; and
- C. the Exclusion for Educational Information.

It is imperative for researchers and others involved in research and educational activities to be aware of these key exclusions, and to understand that their benefits can be lost if certain provisions are present in research and educational activities–related agreements. For this reason, PIs should avoid entering into informal understandings or “side agreements” with sponsors that restrict foreign person access to the research or that impose sponsor controls on the publication or dissemination of the results. It is also important to remember that the restrictions enforced by OFAC are not affected by the ITAR, EAR, or FRE.

⁶ Contact TAMUT Office of Research Compliance for assistance in determining controlled items, controlled information, and screening against restricted party lists.

4.1 CONTRACT PROVISIONS OF CONCERN

Certain research and educational activities agreement provisions may negate the FRE, and require seeking a license or undertaking monitoring or other activities. Possible provisions of concern are identified on the *Export Controls Decision-Making Tree for Administration of Contract Provisions of Concern* in Appendix B of this manual, and are summarized below.

If any of the following provisions are present (and cannot be negotiated away) in a research or educational activities agreement or subcontract, a Material Transfer Agreement (MTA), or Non-Disclosure Agreement (NDA) related to research or educational activities, the agreement should be submitted to TAMUT Office of Research Compliance for further review prior to execution of the agreement:

- A. Sponsor maintains the right to restrict or approve publication or release of research or educational activity results (other than a customary brief delay to protect a sponsor's confidential information or to preserve the patentability of an invention).
- B. Research or educational activity data and/or other research or educational activity results will be owned by the sponsor (e.g., as sponsor's proprietary or trade secret information).
- C. Statements that export control regulations will apply to the research or educational activity.
- D. Incorporation by reference of Federal Acquisition Regulations (FARs), agency-specific FARs, or other federal agency regulations—which impose specific controls on access to or dissemination of research or educational activity results (see Section 4.2, below).
- E. Restrictions on or prohibitions against, the participation of research or educational activity personnel based on citizenship or national origin.
- F. Statements that the sponsor anticipates providing export-controlled items or information for use in connection with the research or educational activity.
- G. Equipment or encrypted software is required to be delivered as part of the project.
- H. The research project or educational activity will involve the use of export-controlled items or technical information obtained from a third party.
- I. The research or educational activity will take place outside the United States.
- J. There is a Controlled Unclassified Information (CUI) clause (e.g. DFARS 252.204-7012)

4.2 SPECIFIC U.S. GOVERNMENT ACCESS AND DISSEMINATION CONTROLS

Specific access and dissemination controls may be buried within the language of FARs, Defense Federal Acquisition Regulations (DFARs), and other agency-specific regulations included as part of a prime contract, or flowed down in a subcontract. These clauses include, but are not limited to:

- A. FAR 52.227-14 (Rights in Data—General)

Grants the government unlimited rights in data first produced or delivered under the contract. Government approval required to assert copyright in data first produced in the performance of the contract and not published in academic, technical, or professional journals, symposia proceedings, or similar works. For basic or applied research suggest

requesting Alternate IV to lift this restriction. Alternate IV provides the contractor with the right to copyright data without government permission.

B. FAR 52.227-17 (Rights in Data—Special Works)

Prevents the release, distribution, and publication of any data originally produced for the government's internal use, and represents an absolute restriction on the publication or dissemination of contractor-generated data. It should not apply to basic and applied research, and should be removed from the contract on the basis of exceptions to this clause's applicability.

Refer to FAR 27.405-1 (a).

C. DFARS 252. 204-7000 (Disclosure of Information)

States, "Contractor shall not release to anyone outside the Contractor's organization any unclassified information, regardless of medium (e.g.; film, tape, document), pertaining to any part of this contract or any program related to this contract." Three exceptions apply:

- (1) if the contracting officer has given prior written approval;
- (2) where the information is already in the public domain prior to date of release; or
- (3) if the research is determined in writing to be fundamental research by the Contracting Officer.

Refer to 27.404(2) & (3) and NSDD-189 as justification for getting the restriction removed. Also, can refer to IRS Ruling 76-296. May also add alternate language that allows for review and comment on publications.

D. DFAR 252.225-7048 (Export-Controlled Items)

States, "The Contractor shall comply with all applicable laws and regulations regarding export-controlled items, including, but not limited to, the requirement for contractors to register with the Department of State in accordance with the ITAR. The Contractor shall consult with the Department of State regarding any questions relating to compliance with the ITAR and shall consult with the Department of Commerce regarding any questions relating to compliance with the EAR." May have to require the PI to certify that the project does not involve any items that are subject to export control laws.

E. ARL 52.004-4400 (Approval of Foreign Nationals)

All foreign nationals must be approved before beginning work on the project. Contractor is required to divulge if any foreign nationals will be working on the project. Provision of name, last country of residence, citizenship information, etc. is required. This clause is commonly found in contracts involving controlled technology, and sponsored by military agencies. May need to require the PI to certify that no foreign nationals will be working on the project. If no foreign nationals will be employed on the project, contractor may disregard this clause. If the PI is doing basic research and the sponsor will take those results and work on the controlled technology at another location, may be able to delete this clause.

F. ARL 52.005-4401 (Release of Information).

Includes reference to “non–releasable, unclassified information” and a requirement to “confer and consult” prior to release of information. It is unclear what the review entails. Therefore, the sponsor retains publication/information approval, which voids the FRE. Substitute with ARL Cooperative Agreement Language: Prior Review of Public Releases, “The Parties agree to confer and consult with each other prior to publication or other disclosure of the results of work under this Agreement to ensure that no classified or proprietary information is released. Prior to submitting a manuscript for publication or before any other public disclosure, each Party will offer the other Party ample opportunity (not to exceed 60 days) to review such proposed publication or disclosure, to submit objections, and to file application letters for patents in a timely manner.”

G. AFMC 5352.227-9000 (Export–Controlled Data Restrictions)

Requires an export license prior to assigning any foreign national to work on the project or allowing foreign nationals access to the work, equipment, or technical data generated by the project. Need to ask the PI if the project is basic or applied research. If yes, it may fall under an ITAR exclusion. May also ask the defense contractor if foreign nationals are allowed to work on the project. If yes, obtain confirmation in writing.

4.3 PROCEDURES APPLICABLE TO RESEARCH AGREEMENTS AND SUBCONTRACTS

ORC has adopted the Export Control Screening Procedures contained in Appendix J.

4.4 RESOLVING EXPORT CONTROL ISSUES

A. TAMUT Office of Research Compliance

When a potential export control issue is identified, TAMUT Office of Research Compliance will work with the parties involved as appropriate, and determine what course of action should be taken to address the issue. In many cases, no license or other authorization may be necessary. In each case, TAMUT Office of Research Compliance will determine whether:

- (1) the conditions merit an application for a license or other authorization;
- (2) the conditions are such that an exclusion or license exception may be obtained; or
- (3) a technology control plan (TCP), or other requirements for the conduct of the research will be necessary to prevent an unauthorized deemed export of the technology from occurring.

TAMUT Office of Research Compliance will notify the parties involved of TAMUT Office of Research Compliance’s export control determinations. TAMUT Office of Research Compliance will maintain records of its determinations on a project basis, as provided in Section 13, *Recordkeeping*.

B. TCP

(1) Development

If TAMUT Office of Research Compliance determines a project, facility, or item is export–controlled, TAMUT Office of Research Compliance will work with the PI, department/unit representatives, facility managers, and A&M System members—as appropriate—to develop and implement a TCP to secure the controlled technology

from access by unauthorized foreign persons. A sample TCP template is available in Appendix D, and will typically include:

- a. a commitment to export controls compliance;
- b. identification of the relevant export control categories and controlled technologies;
- c. identification of the project's sponsors;
- d. identification and nationality of each individual participating in the project;
- e. appropriate physical and informational security measures;
- f. personnel screening measures and training; and
- g. appropriate security measures for the duration of the project for and following project termination.

(2) Appropriate Security Measures

The TCP will include physical and informational security measures appropriate to the export control categories related to the facility, project, or item. Examples of security measures are specific to the project or item and can include:

- a. *Laboratory Compartmentalization*—Project operation may be limited to secured laboratory areas physically shielded from access or observation by unauthorized individuals. These areas must remain locked at all times.
- b. *Time Blocking*—Project operation may be restricted to secure time blocks when unauthorized individuals cannot observe or access.
- c. *Marking*—Export-controlled items or information must be clearly identified and marked as export-controlled.
- d. *Personnel Identification*—Individuals participating on the project may be required to wear a badge, special card, or other similar device indicating authority to access designated project areas. Physical movement into and out of a designated project area may be logged.
- e. *Locked Storage*—Tangible items such as equipment, associated operating manuals, and schematic diagrams should be stored in rooms with key-controlled access. Soft and hardcopy data, lab notebooks, reports, and other research materials should be stored in locked cabinets.
- f. *Electronic Security*—Project computers, networks, and electronic transmissions should be secured and monitored through User IDs, password controls, 128-bit or greater Secure Sockets Layer encryption, or other federally approved encryption technology. Database access should be managed via a Virtual Private Network⁷.

⁷ A mechanism for providing secure, reliable transport over the Internet. A VPN uses authentication to deny access to unauthorized users, and encryption to prevent unauthorized users from reading the private network packets. The VPN can be used to send any kind of network traffic securely, including voice, video or data.

- g. *Confidential Communications*—Discussions about the project must be limited to the identified and authorized project participants, and only in areas where unauthorized individuals are not present. Discussions with third party sub-contractors must occur only under signed agreements which fully respect the foreign person limitations for such disclosures.

(3) Export Licensing

If a license, Technical Assistance Agreement, Manufacturing License Agreement, ITAR Registration, or other authorization is the appropriate method to address an export control issue as determined by TAMUT Office of Research Compliance, TAMUT Office of Research Compliance will consult with the PI and other appropriate parties to gather all the information needed to submit the appropriate documentation to seek a license or other authorization. TAMUT Office of Research Compliance will inform the empowered official of the details of the export control issue and make a recommendation that a license or other authorization should be obtained. The empowered official will request the license or other authorization from the cognizant agency with assistance from TAMUT Office of Research Compliance and the A&M System OGC as appropriate.

Section 5.0 | *International Visitors*

5.1 RESPONSIBILITY TO REQUEST AUTHORIZATION TO VISIT

All TAMUT employees intending to invite or host international visitors have the responsibility to notify TAMUT Office of Research Compliance in advance of the proposed visit, per TAMUT Rule UR 15.02.99.H1 *Export Controls*.

For the purposes of these procedures, international visitors have been delineated into two categories: exempt and non-exempt. Qualifications for these statuses as well as procedures and responsibilities associated with inviting international visitors are fully outlined in the Rule indicated above or as detailed in the International Visitors Decision Making Tree, Appendix B.

5.2 NO AUTHORIZATION TO ACCESS CONTROLLED INFORMATION, CONTROLLED PHYSICAL ITEMS

No international visitor may have access (whether verbal, written, electronic, and/or visual) to controlled information or controlled physical items unless expressly permitted via an approved TCP, license, or as authorized in writing by TAMUT Office of Research Compliance. It is the responsibility of the TAMUT employee hosting the visitor to ensure compliance with export control restrictions, and to promptly disclose and report any violations to the empowered official or TAMUT Office of Research Compliance.

5.3 SCREENING OF INTERNATIONAL VISITORS

Screening of international visitors includes the screening of the visitor's employer and/or sponsoring entity. Screening is needed whenever a written or verbal invitation to visit TAMUT is made to an international visitor regardless of whether:

- A. The international visitor is present or not in the U.S.

- B. TAMUT needs to sponsor the international visitor for immigration purposes under the J-1 Exchange Visitor Program⁸.
- C. TAMUT does not need to sponsor the international visitor for immigration purposes because he or she is traveling or has entered the U.S. under the Visa Waiver Program, a B-1/B-2 visa, or other nonimmigrant visa status as indicated on a properly annotated I-94.

5.4 PROCEDURE TO NOTIFY AND REQUEST AUTHORIZATION TO VISIT

A. Exempt International Visitors

TAMUT employees intending to host international visitors of which are determined to be exempt international visitors (as defined in TAMUT procedures indicated in section 5.1) will contact TAMUT Office of Research Compliance in advance of the intended visit. As an Exempt Visitor, the party is not subject to RPS unless the terms and/or purpose of the visit changes. TAMUT Office of Research Compliance will work directly with the host in determination of any potential export controls issues associated with such visit.

Any changes in the initial terms and intent of the visit that would make such exempted international visitor fall under one or more of the conditions subject to the Visitor Exchange Program (as defined in TAMUT procedures indicated in section 5.1) require the host employee to immediately notify TAMUT Office of Research Compliance. The host will be responsible for completing the *International Visitor Request Form*, as described below.

B. Non-Exempt International Visitors and Visitor Exchange Program

Prior to the visit, faculty, researchers, and administrators inviting and hosting international visitors as non-exempt international visitors and visiting scholars, scientists, or interns must complete the *International Visitor Request Form* and the *Visiting Scholar Agreement*—or any other form identified from time-to-time by TAMUT Office of Research Compliance.

These forms must be submitted to TAMUT Office of Research Compliance. Submission is required regardless of whether the visit involves or results in a financial disbursement (i.e. honorarium, reimbursement of expenses, and alike) payable to the international visitor. TAMUT Office of Research Compliance will conduct export controls review of the proposed visit. Any export control issues raised in *International Visitor Request Form* will be addressed by TAMUT Office of Research Compliance and the requesting host. If RPS results cause restrictions to be imposed, TAMUT Office of Research Compliance will notify the requestor in attempt to resolve such issues if possible. Once approved, a copy of the approval (and associated documents) will be sent to the department and Human Resources to initiate the immigration process for those instances in which TAMUT needs to sponsor the international visitor, as well as for those in which the international visitor is traveling under the Visa Waiver Program, a B-1/B-2 visa, or other nonimmigrant visa status as indicated properly on the annotated I-94.

Section 6.0 | *Employment of Non-Immigrant Foreign Nationals/Persons*

It is imperative for TAMUT hiring departments/units to be aware that the ability to hire non-immigrant foreign nationals for certain positions may be restricted or prohibited by export control laws. For example,

⁸ For example, Foreign Persons may come to visit TAMUT under the J-1 exchange visitor program in the following instances: (a) Sabbaticals with their own funding; (b) Conducting collaborative research funded by their home institution or government; (c) Fulbright or other similar type of sponsorship; and (d) Student internship, paid or unpaid.

non-immigrant foreign nationals may be restricted or prohibited from performing employment responsibilities relating to certain information technology systems positions to the extent the work will involve access to controlled information or items. If non-immigrant foreign nationals are prohibited by export control laws from performing the employment responsibilities associated with a position, the Job Posting may be posted in such a way that those individuals are notified ahead of time they cannot be considered. The following statement may be added to the "Comments to Applicant" section of the NOV: *Non-immigrant foreign nationals are prohibited by export control laws from performing the employment responsibilities associated with this position; sponsorship is not available.*

Upon the decision to hire a non-immigrant foreign national, Human Resources will confirm TrainTraq export control training as detailed in Section 14 has been completed by the hiring supervisor prior to the extending of an employment offer.

After extending an employment offer to foreign nationals, hiring units are required to submit *International Visitor Request Form* to TAMUT Human Resources. Human Resources will forward the *International Visitor Request Form* to TAMUT Office of Research Compliance who will conduct RPS, and return *International Visitor Request Form* to TAMUT Human Resources as notification of the completed RPS. When hiring individuals under certain visa statuses (not including J-1, J-2, and F-1 OPT), supervisors are required to complete an Export Control Review & Certification and a Deemed Export Control Attestation (part of the Immigration Services for Faculty & Scholars HR paperwork – examples in Appendix K) certifying that technology or technical data to be released or accessed by the foreign national as a result of the offered employment may or may not require a license. Records will be kept in accordance with Section 13, *Recordkeeping*. Units will forward the completed *International Visitor Request Form* with in-processing documents to Human Resources for inclusion in the employee's personnel file.

Any export control issues related to the hiring of nonimmigrant foreign nationals should be referred to TAMUT Office of Research Compliance for resolution.

Section 7.0 | *International Activities*

In the case of TAMUT activities conducted outside the U.S., it is the responsibility of the TAMUT activity organizer to seek and obtain appropriate export control approvals from TAMUT Office of Research Compliance for activities including, but not limited to, the following: execution of agreements performable outside the U.S.; and making payments to foreign person vendors.

7.1 TRAVEL—GENERAL

TAMUT employees traveling on TAMUT business or traveling with TAMUT property are responsible for complying with export control laws and regulations when traveling outside the U.S. Per formal agency procedures, TAMUT employees will complete TAMUT International Travel – Export Control Screening form and submit to the TAMUT Office of Research Compliance, before international travel commences.

In addition to export controls related compliance associated with international travel, TAMUT employees should review any university and department procedures which outline approval processes, high risk travel, and other compliancy areas related to international travel before planning a trip abroad.

All employees intending to travel abroad on TAMUT business or with TAMUT property are required to complete TrainTraq courses as specified in Section 14 before the beginning of their trip.

In regards to export controls compliance, a license may be required depending on which items are taken, which countries are visited, or whether defense services are provided to a foreign

person. The traveler or the traveler's supervisor should contact TAMUT Office of Research Compliance with any potential export control concerns.

When planning a trip abroad, travelers should review export control regulations and embargoes. Travelers should think about the purpose of their trip, who they plan to interact with, what they will take, where they will go, and how long they will be traveling abroad. Items that are not needed should not be taken abroad. Individuals should ensure that any information that will be discussed or any items that will be taken are not controlled, or—if controlled—that appropriate licenses are in place. Travelers should consult TAMUT Office of Research Compliance if they are thinking about taking encrypted software, controlled items/information, or unpublished research data or data not in the public domain, or if traveling to an embargoed country. Not only could TAMUT be held liable, but individuals may also be held liable for improperly transferring controlled information or controlled physical items.

Most travel for conferences will fall under an exclusion to the export control regulations, e.g., the Publicly Available/Public Domain Exclusion, 22 CFR §120.11 and 15 CFR §734.3. Information that is published and is generally accessible to the public through publication in books or periodicals available in a public library or in bookstores or information that is presented at a conference, meeting, seminar, trade show, or other open gathering is considered to be in the public domain. An open gathering is one in which members of the general public are eligible to attend, and attendees are permitted to take notes.

TAMUT employees traveling outside the U.S. with laptops, PDAs, cell phones, or other data storage devices and encrypted software must ensure that there is no controlled information on such devices unless there is a specific license or other authorization in place for the information for that destination. Any individual intending to travel with or transmit controlled information outside the U.S. should first consult with TAMUT Office of Research Compliance. There are a number of exceptions and exclusions that may apply depending upon the facts and circumstances of each case.

If personal computers and other storage devices are taken abroad that contain encrypted software, a government license or other government approval for export may be required when traveling to certain countries.

Temporary exports under the "Tools of Trade" license exception apply when the laptop, PDA, cell phone, data storage devices, and encrypted software are:

- (1) Hand-carried with the individual while traveling,
- (2) Carried in the luggage or baggage that travels with the individual, or
- (3) Shipped no more than thirty days prior to the individual's departure or may be shipped to the individual at any time while the individual is outside the country.

Generally, no government export license is required so long as an individual:

- (1) retains his or her laptop computer, PDA, cell phone, data storage devices and encrypted software under their personal custody and effective control for the duration of travel; (Note: In some instances, personal custody requires the person to have with them during meals, etc.)
- (2) does not intend to keep these items in these countries for longer than 1 year; and

(3) is not traveling to an embargoed country⁹.

Note that this license exception is not available for equipment, components, or software designed for use in/by/with most satellites or spacecraft. “Effective control” means retaining physical possession of an item or maintaining it in a secure environment.

Researchers may need to take other TAMUT equipment temporarily outside of the U.S. for use in TAMUT activities. Often, but not always, the tools of trade license exception applies. Some equipment (e.g., global positioning systems [GPS], thermal imaging cameras, inertial measurement units, night vision goggles, and specialty software) is highly restricted, and may require an export license, even if one hand carries it. If taking TAMUT equipment other than a laptop computer, PDA, cell phone, or data storage devices, contact TAMUT Office of Research Compliance to determine if an export license or other government approval is required prior to taking the equipment out of the country.

TAMUT has implemented a “loaner” laptop program of which TAMUT employees must check out a “loaner” or “clean” laptop of which to be used while traveling abroad. Note: TAMUT Information Technology a minimum of 2 weeks prior to any trip when requesting a “clean loaner” laptop.

Please see Appendix I of this manual for recommended protocols before traveling internationally with laptops. If items or information are stolen while traveling abroad, travelers shall promptly contact TAMUT Information Technology (903.334-6603; ISITE@tamut.edu) and TAMUT Office of Research Compliance (903.223.3003; research@tamut.edu).

It is important to note that activities involving teaching or training foreign persons on how to use equipment may require a license. Contact TAMUT Office of Research Compliance for information applicable to travel exemptions and exceptions.

7.2 NON-EMPLOYEES PARTICIPATING IN TAMUT INTERNATIONAL ACTIVITIES

All foreign persons acting on behalf of but not employed by TAMUT (e.g. independent contractors; volunteers; foreign collaborators) and are not currently employed by a college or university based in the United States, should undergo RPS prior to participation in research or educational programs.

7.3 STUDENT TRAVEL

In addition to the General Travel guidelines and requirements in Section 7.1, all students traveling outside the U.S. for academic purposes must register with the International Students Office. TAMUT students/employees/trip leaders organizing and/or accompanying such travel are required to abide by procedures, requirements, and guidelines in TAMUT Procedure 13.04.99.H1.01 *Student Travel*.

Section 8.0 | *Financial Transactions, Conferences, Procurement, and Non-Sponsored Contracts*

TAMUT (Accounts Receivables, Cash Management, Disbursements, and Procurement and Contracts), in cooperation with TAMUT Office of Research Compliance, is responsible for developing and implementing procedures to screen financial transactions as appropriate for compliance with export control laws and regulations.

⁹ See OFAC’s Sanctions Program and Country Summaries at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> for the most current list of embargoed countries and U.S. sanctions.

8.1 FINANCIAL TRANSACTIONS

A. Vendors

For international non–employee vendors setup in FAMIS, ORC will conduct RPS. Records will be kept in accordance with Section 13, *Recordkeeping*.

B. Wire Transfers

RPS will be conducted for all international outgoing wire transfers before the transaction process takes place. TAMUT Accounting or other appropriate offices will notify TAMUT Office of Research Compliance when wire transfers are requested—and before funds are released—so RPS can be conducted. TAMUT Office of Research Compliance will sign the Wire Transfer Request indicating that RBS has been conducted and returned to Accounting before the transfer is routed to Accounts Payable for Processing. From this point, normal procedures for AgriLife Banking and Receivables will commence. Records will be kept in accordance with Section 13, *Recordkeeping*.

C. Accounts Receivables

Only departments and units invoicing foreign persons or entities will contact TAMUT ORC before sending the invoice or invoice request. Units shall contact TAMUT ORC with associated documentation, who will then conduct RPS. TAMUT ORC will respond to the department or unit as notification of the completed RPS. Records will be kept in accordance with Section 13, *Recordkeeping*.

8.2 TAMUT HOSTED CONFERENCES ALLOWING INTERNATIONAL PARTICIPATION

RPS will be conducted for all international registrants attending conferences hosted by TAMUT employees. TAMUT Office of Research Compliance will coordinate with the host employee to ensure materials being presented and locations toured do not need any further export control compliance actions.

A. TAMUT Managed Conferences

TAMUT employees managing conferences will provide TAMUT Office of Research Compliance access to conference registration rosters for those conferences offering international participation. TAMUT Office of Research Compliance will conduct RPS for international registrants periodically as the conference date approaches. Additionally, TAMUT Office of Research Compliance will contact the TAMUT host to ensure no further export controls compliance action items are needed in relation to such conference. Records will be kept in accordance with Section 13, *Recordkeeping*.

B. TAMUT Conferences Managed by Other Entities

If a TAMUT employee intends to host a conference not managed through TAMUT and allowing international participation, the host will contact TAMUT Office of Research Compliance to work through any potential export controls concerns. RPS will be conducted by TAMUT Office of Research Compliance as well as working with the host in ensuring no further export controls compliance action items are needed in relation to such conference.

8.3 PROCUREMENT

TAMUT employees making international purchases with procurement cards or under unit delegation will be responsible for ensuring such transactions comply with export control laws and regulations, as well as coordinating with TAMUT Office of Research Compliance to resolve any export control issues prior to the purchase. Units should contact TAMUT Office of Research Compliance to conduct RPS prior to an international purchase if feasible.

International purchases coordinated through TAMUT Procurement will be forwarded internally to TAMUT Office of Research Compliance to conduct RPS. Additionally, language indicating the need for vendors to provide TAMUT Office of Research Compliance with applicable export control classification numbers and/or indicate that the item to be purchased is export controlled will be added to terms and conditions documents routed through TAMUT Procurement. Items to be purchased identified through risk-based monitoring plans will also be forwarded by TAMUT Procurement to TAMUT Office of Research Compliance to aid in identification of potentially export-controlled items. Corresponding TCPs will be implemented if deemed necessary based upon the corresponding export control-related risk. Contracts will be reviewed for export control-related language, and forwarded to TAMUT Office of Research Compliance for additional review if deemed necessary.

It is important to identify the procurement of ITAR items at an early stage because the State Department tightly restricts Foreign National access to ITAR items regardless of whether or not there is an intention to use the item or an understanding of how to use it. This includes visual access in the laboratory environment. EAR restrictions, on the other hand, are “use-based” restrictions: access to (and operation of) the item is generally not at issue, absent certain exceptional use related conditions.

- a. While vendors often self-identify ITAR items, those engaged in purchasing should nonetheless remain aware that, in the event that the vendor does not self-identify, the following types of items are often ITAR controlled. In general, these types of items would be used by the following research disciplines: marine, geological, geographic, and atmospheric research.
 - Night vision goggles, infrared cameras
 - Gravimeters
 - Equipment on loan from federal sponsors
 - Sonobuoys and deep oceanic position signaling devices
 - Military-band communications systems or GPS
 - DOD funded military electronics
 - Submersible vessels and related remotely operated accessories
 - Inertial navigation units, modem chips, and components
 - Radar applications
 - Wind tunnel apparatus

- b. The following list illustrates, by example, the types of dual use (and potentially higher risk/controlled) equipment commonly found in research laboratories and for which those purchasing should identify/request classification.¹⁰
 - Measuring and sensing devices
 - Gas movement and filtering devices
 - Precision tooling, positioning and balancing instruments
 - Optical and photonic components (including sensors, infrared and focal plane array detectors)

¹⁰ This list is not intended to be comprehensive of all possible dual use instruments.

- Oscilloscopes; spectrometers; fermenters
- Nuclear/radioactive transport or shielding equipment
- Class 3 and 4 lasers, and related precision beam equipment
- Semiconductor substrate and etching development equipment and processes
- Fiber optic cable development equipment
- Marine submersible equipment (including hydrophones, signal receiving/emitting devices, pingers, acoustical releases, submersible video and television apparatus, etc.)
- Unmanned aerial vehicles (drones)
- Inertial navigation systems and related instruments
- Remotely operated vehicles (ROVs)

c. Identifying ITAR and EAR-Controlled Items in the Procurement Process

For those involved in purchasing items which might be controlled, below are some questions to ask:

- i. Has the vendor disclosed that an item is controlled in product or sales documentation by incorporating such information in the following types of documentation:
 1. Quotation documentation on the purchase order an analogous purchase documentation (i.e., master purchase agreement)
 1. Commercial invoice or packing slip that accompanies the item
 2. Product specification web page
 3. Certification issued by the vendor (requiring department to acknowledge in writing the export controlled status of the item)
 4. Software license (or related terms/conditions)
- ii. If there has been no identification on whether an item is controlled or not, the vendor/licensor should be asked to certify whether or not the item is controlled at an early stage of the purchasing process by issuing a vendor certification. For assistance, the ORC should be contacted.

d. When an ITAR Item is Identified

Prior to purchase, if an ITAR item is identified, the ORC should be contacted so appropriate measures can be taken. This may include a discussion with the requisitioning department/individual about whether it is essential to have an ITAR item that will impose Foreign National access and use restrictions or instead procure a substitutable lesser-controlled item with no access/use restriction.

e. When a Particular Specification or Build to Print Items is Marked "ITAR" or "Export Controlled"

Those seeking to outsource the fabrication, testing or development of an item to a vendor or subcontractor necessitating the transfer of technical data marked "ITAR" or "export controlled", should notify the ORC prior to forwarding the item to any party so that any export control implications of the documentation can be resolved.

f. Asset Management

Those involved in asset management should take steps to flag items identified as export controlled in the data inventory system for future disposition.

g. Shipment of Items identified as ITAR/EAR Controlled

If an individual becomes aware that an item identified as ITAR or EAR controlled will be sent by TAMUC to a location outside the United States, the individual should notify the ORC and advise the requisitioning department/individual to have the proposed shipment reviewed by the ORC prior to shipment.

If departments are unsure of any export controls compliance associated with procurement such as purchasing of export-controlled equipment or items, please contact TAMUT Office of Research Compliance.

8.4 NON-SPONSORED AGREEMENTS, NON-SPONSORED CONTRACTS, AND INDEPENDENT CONTRACTORS

A. Non-Sponsored Agreements and Contracts

For contracts (such as Memorandum of Understandings, Memorandum of Agreements, or MTAs) processed through TAMUT Contracts, RPS will be conducted on all international sponsors, and such agreements will be assessed for export control implications. TAMUT Contracts will notify TAMUT Office of Research Compliance by forwarding agreements and non-sponsored contracts so RPS and export control assessments can be conducted. TAMUT Office of Research Compliance will return such agreements to TAMUT Contracts as notification of the completed RPS and assessment. Records will be kept in accordance with Section 13, *Recordkeeping*.

B. Independent Contractors

For independent contractor requests processed through TAMUT Contracts, RPS will be conducted for international independent contractors before the work and transaction processes take place. TAMUT Office of Contract Management will notify TAMUT Office of Research Compliance by forwarding completed Restricted Party Screening Request Form—so RPS can be conducted. TAMUT Office of Research Compliance will return the results to TAMUT Procurement and Contracts as notification of the completed RPS. Records will be kept in accordance with Section 13, *Recordkeeping*.

Section 9.0 | *Technology Commercialization*

All new TAMUT technology disclosures will be reviewed by TAMUT Office of Research Compliance and Office of Risk and Compliance, and other offices as appropriate. Any potential export-controlled issues will be referred to TAMUT Risk and for recommended handling in coordination with Texas A&M University System.

Section 10.0 | *Shipments*

It is the responsibility of TAMUT employees who are shipping items outside or inside the U.S. (including hand-carrying items such as research equipment, computers, materials, data, or biological materials) to comply with export control laws and regulations. Any transfer of project information, equipment, materials, or technology out of the U.S. by any method may be subject to export control restrictions, and may require an export license or be prohibited depending on the item, destination, recipient, and end-use. Even if an item is cleared through U.S. Customs, it may still require an export control license. Contact TAMUT Office of Research Compliance with assistance in shipping.

The simple act of sending a package to a foreign collaborator can result in a violation of export controls. Also, shipping to countries subject to embargoes¹¹ must first be cleared by TAMUT Office of Research Compliance. Department/unit personnel who are responsible for shipping packages out of the country should obtain a list of contents before shipping, and contact TAMUT Office of Research Compliance with any questions.

Every effort should be made to correctly label a package and accurately represent the classification of the item because mislabeling and misclassification, regardless of intent, is a violation of the law. Under-invoicing or under-valuing an exported item is a violation of law, or reporting an incorrect export value on a Shippers Export Declaration also violates export regulations.

A shipping decision tree is available in Appendix B of this manual for shipping-related questions and concerns. Any potential export control issues regarding shipping should be referred to TAMUT Office of Research Compliance for assistance and resolution.

Section 11.0 | *Distance Education and International Students*

Distance education at TAMUT refers to credit bearing, transcribed courses only offered to enrolled and registered students where the course delivery occurs in a setting where the students and faculty member of record are not in the same place at the same time or where the instruction for the course occurs at an approved off-campus educational site. This instruction can be in the form of 100 percent online, face-to-face offsite, or some hybrid combination of face-to-face and online. Due to the element of distance in this education delivery method, some export control concerns may arise. It is the responsibility of the department offering the course and the faculty instructor of record to ensure export control requirements are reviewed and any concerns addressed with the Office of Research Compliance. Particular guidance is provided in the following areas for review of export control in distance education:

11.1 Restricted Party Screening (students seeking admission for degree programs and/or registering for courses offered via distance education)

Confirming the identification of students enrolled in distance education is standard operating procedure for all courses, whether the student is foreign or domestic. Beginning with the student admission process, student identification is authenticated by the review of student admissions application materials, further identification provided during financial aid and housing application, issuance of a Universal Identification Number (UIN) and unique password. The authenticated UIN and password are used to gain access to a variety of student resources including student registration and information portal, as well as the e-learning resources utilized in delivery of distance education.

International students or any admitted student seeking to register for courses from outside the United States or through one of the University's approved off-campus educational sites will be subject to Restricted Party Screening (RPS) by Office of Research Compliance as identified by the Registrar's Office prior to the first day of classes and by the 20th day of classes for students registering late for classes. Results of the Office of Research Compliance review will be communicated to the Registrar's Office before a student is permitted to take a course.

If a student is identified as ineligible by Office of Research Compliance for participation in a degree program offered via distance education, then the Office of Admissions, in concert with the department facilitating the desired degree program, will rescind the admission offer.

¹¹ See OFAC's Sanctions Program and Country Summaries at <http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx> for the most current list of embargoed countries and U.S. sanctions.

If a student is identified as ineligible by Office of Research Compliance for participation in a course offered via distance education, then the Office of the Registrar, in concert with the department facilitating the desired course, will remove the student from the course registration and block access to the course e-learning resources.

11.2 Certification of Course Content Delivered by Distance Education

Regular reviews by Office of the Provost of existing courses offered via distance education will be conducted to ensure that all content was limited to information from commonly available sources and met the educational information exclusion provided in export control regulations.

Each semester, each department indicates the previously approved courses (including sections to be delivered via distance education) the department intends to offer for student registration in the coming semester.

Beginning with registration for the Fall 2020 semester, each department will confirm compliance with export control requirements by completing the export control acknowledgement questions as part of the request for scheduling the course in the Section Request System.

The Office of the Registrar will ensure each department head has completed the export control acknowledgement satisfactorily and/or completed Office of Research Compliance review and approval prior to allowing students to register for the section.

11.3 New or Modified Course Offerings via Distance Education

Faculty requesting to offer new or significantly modified courses must submit a Course Inventory Add/Reinstate Form or Course Change Request to the Dean of the respective college and the VP of Academic Affairs for approval.

These requests include the course description, course credits, course program level (bachelor, masters, doctoral), required and recommended course materials, course number, prerequisites, etc.

The New Course Request and Change in Course Request include verification that the faculty member has reviewed the Export Control Basics for Distance Education document.

Section 12.0 | Appeals

If a proposed activity is denied, and the employee would like to appeal the decision, they may do so by detailing the reason why their project should be reconsidered in writing. This appeal shall be submitted to TAMUT Office of Research Compliance no later than seven business days of the initial denial.

If the appeal is received later than post seven calendar days of the initial denial, TAMUT Office of Research Compliance will notify the submitter of the timeframe compliancy requirements, and that the appeal will not move forward. If the appeal is received in the appropriate timeframe, TAMUT Office of Research Compliance will route to the University President for further consideration. The University President will review and deny or approve the appeal. This decision is the final decision, and notification to the requestor will be made by TAMUT Office of Research Compliance.

Section 13.0 | Recordkeeping

Records required to be maintained by export control laws and regulations will be kept for the longer of:

- A. the record retention period required by the applicable export control regulations (see 15 C.F.R. Part 762 (EAR); 22 CFR Sections 122.5, 123.22, and 123.26 (ITAR); and 31 CFR 501.601 (OFAC), or
- B. the period required for the retention of records as set forth in System policies and regulations, university and agency rules/procedures, and the System records retention schedule.

Records will be maintained by TAMUT Office of Research Compliance or other TAMUT departments, as appropriate.

Records that should be retained include all memoranda, notes, correspondence (including email), financial records, shipping documentation as well as any other information related to the export activities. In addition, whenever a license or license exception or exemption is used, additional records documenting the applicability of the license, or exception/exemption may be required and in some cases there may be additional reporting requirements. The ORC should be contacted for guidance.

Those conducting RPS are expected to maintain documentation of Restricted Party Screening results including, documentation indicating the methodology for their determinations.

Unless otherwise provided for, all records indicated herein will be maintained consistent with the TAMUT record retention policy, and must be retained no less than five (5) years after the project's TCP termination date or license termination date, whichever is later (subject to any longer record retention period required under applicable regulations).

Section 14.0 | Training

The A&M System provides an online training course via Single Sign On, TrainTraq Course #2111212, *Export Controls and Embargo Training*. This training is currently now required for all employees of TAMUT at least once every two (2) years.

Additionally, anyone traveling internationally on behalf of TAMUT is also required take TrainTraq course 2111728, *International Travel Safety: Safe Passage Presentation* and TrainTraq course 2113639, *U.S. Foreign Corrupt Practices Act*.

Additionally, face-to-face training opportunities will be made available to TAMUT employees in efforts to raise awareness and further explain employee responsibilities. Contact TAMUT Office of Research Compliance to schedule face-to-face training sessions.

Section 15.0 | Internal Audit and Monitoring

To assist departments/units in complying with export control procedures, the TAMUT Office of Research Compliance and/or Director of Compliance may conduct periodic reviews as deemed appropriate. Additionally, this team will also conduct periodic self-assessments of the TAMUT Export Controls Compliance Program.

Section 16.0 | *Information Technology*

TAMUT Employee Responsibilities

TAMUT employees shall not:

- electronically store export–controlled documents on “cloud servers” (e.g. Syncplicity, iCloud, DropBox, Google Drive, Microsoft SkyDrive); or
- allow unauthorized second–party access to export–controlled electronic documents.

TAMUT employees shall strictly adhere to protocols outlined in technology control plans assigned to specific projects, items, and/or information to protect unauthorized access—*inclusive of electronic data protection*—of such items.

Section 17.0 | *Possible Violations*

Each TAMUT employee has the responsibility to report possible violations of U.S. export control laws or regulations. Suspected violations should be reported by one of the following methods:

- (1) TAMUT Office of Research Compliance at (903) 223-3003; or
- (2) through the EthicsPoint website at <https://secure.ethicspoint.com/domain/media/en/gui/20505/index.html>;

Possible violations of U.S. export control laws or regulations will be investigated by the empowered official, to the extent deemed necessary. The empowered official is authorized by the agency director to suspend or terminate a research, teaching, testing, or other activity if the empowered official, or designee, determines that the activity is not in compliance or will lead to noncompliance with export control laws and regulations. The empowered official may determine whether notification to an appropriate government agency is required. All such decisions will be communicated to the agency director prior to implementation.

Section 18.0 | *Disciplinary Actions*

There are severe institutional and individual sanctions for violations of export controls laws, including the loss of research funding, loss of export privileges, as well as civil and criminal penalties up to and including imprisonment. In the event of non–compliance with processes set forth in this manual or corresponding A&M System policies and regulations, agency rules and procedures, or college guidelines, notice of non-compliance will be forwarded to the corresponding unit head and the Export Control Empowered Official. Additionally, employees may be subject to disciplinary action based on the severity of the infraction. This could include (but is not limited to) a letter of reprimand, or loss or suspension of any of the following: research funding, export privileges, international travel privileges, procurement privileges, international visitor hosting opportunities, conference attendance opportunities, university inventory access, or termination in accordance with TAMUT rules and A&M System policies and regulations.

Related Statutes, Policies, or Requirements -----

[Export Administration Regulations \(EAR\) 15 CFR Parts 700-799](#)

[International Traffic in Arms Regulations \(ITAR\) 22 CFR Parts 120-130](#)

[Office of Foreign Assets Control \(OFAC\) 31 CFR Parts 500-599](#)

[System Policy 15.02, *Export Controls*](#)

Appendix A | Glossary

Controlled Information—Information about controlled physical items, including information which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of controlled physical items, and may be released through visual inspection, oral exchanges, or the application of personal knowledge or technical experience with controlled physical items. It also includes information in the form of blueprints, drawings, photographs, plans, instructions, and documentation. Further included in this definition are non-physical items (software and algorithms, for example) listed under EAR and ITAR. (See 15 CFR Parts 730-774 and 22 CFR Parts 120-130 for further details.)

Controlled Physical Items—Controlled physical items are dual-use technologies listed under EAR and defense articles listed on ITAR's USML. (See 15 CFR Parts 730-774 and 22 CFR Parts 120-130 for further details.)

Deemed Export—A release of technology or source code to a foreign person in the United States. A "deemed export" is considered an export to the country of nationality of the foreign person.

Defense Article—Any item or technical data designated on the United States Munitions List. See ITAR, 22 CFR §121.1.

Defense Service means:

1. The furnishing of assistance (including training) to foreign persons, whether in the United States or abroad in the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing, or use of defense articles;
2. The furnishing to foreign persons of any technical data controlled under the USML (see ITAR, 22 CFR §120.10), whether in the U.S. or abroad; or
3. Military training of foreign units and forces, regular and irregular, including formal or informal instruction of foreign persons in the U.S. or abroad or by correspondence courses, technical, educational, or information publications and media of all kinds, training aid, orientation, training exercise, and military advice (See also ITAR, 22 CFR §124.1).

ECCN—The Export Control Classification Number (ECCN) is the number assigned to each specific category of items or technology listed specifically on the Commerce Control List maintained by the U.S. Department of Commerce, Bureau of Industry and Security. Commodities, software, and technology that do not fit into a specific ECCN are classified as "EAR99" and, while they may be exported to most destinations, may still be controlled for export to certain sanctioned entities or a few prohibited destinations.

Exempted International Visitor—Exempted international visitors are international visitors who are visiting if no honorarium or reimbursement of expenses will occur and if one or more of the following conditions exist with respect to the anticipated visit of the International Visitor:

1. meet with colleagues to discuss a research project or collaboration,
2. tour labs or research facilities that are not otherwise restricted under U.S. export control laws, or
3. participate in general academic or scientific meetings, presentations, or interviews.

Export—An export occurs when a controlled physical item or controlled information is transmitted outside the U.S. borders, or when a controlled physical item or controlled information is transmitted to a foreign person in the U.S. When a controlled physical item or controlled information is transmitted to a foreign person in the U.S., it is known as a deemed export.

The term “export” is broadly defined. It generally includes:

1. actual shipment of any controlled physical items;
2. the electronic or digital transmission of any controlled information;
3. any release or disclosure, including verbal disclosures and visual inspections, of any controlled information; or
4. actual use or application of controlled physical items or controlled information on behalf of or for the benefit of a foreign entity or person anywhere. Complete definitions of the term “export” are contained in the federal regulations.

Foreign National/Foreign Person—Any person other than a U.S. citizen, a lawful permanent resident of the United States (i.e., a “green card” holder), or a “protected individual” as defined in 8 U.S.C. §1324b (c) (1 & 2) (e.g., refugees or persons seeking asylum). For export control purposes, a foreign person includes any individual in the U.S. in nonimmigrant status (i.e., H-1B, H-3, L-1, J-1, F-1, B-1, Practical Training) and individuals unlawfully in the U.S.

A foreign person is also any branch of a foreign government or any foreign corporation or group that is not incorporated or organized to do business in the U.S.

For export control purposes, a foreign person is not an individual who is a U.S. citizen, lawful permanent resident of the U.S., a refugee, a person protected under political asylum, or someone granted temporary residency under amnesty or Special Agricultural Worker provisions.

International Visitor—Foreign persons having a residence in a foreign country, who are not employees of TAMUT, and are coming to TAMUT on a temporary basis as a result of a verbal or written invitation made to the foreign person by a faculty member, researcher, or administrator of TAMUT.

Knowledge—When referring to a participant in a transaction that is subject to the EAR, knowledge (the term may appear in the EAR as a variant, such as “know,” “reason to know,” or “reason to believe”) of a fact or circumstance relating to the transaction includes not only positive knowledge that the fact or circumstance exists or is substantially certain to occur, but also an awareness that the existence or future occurrence of the fact or circumstance in question is more likely than not. Such awareness is inferred, inter alia, from evidence of the conscious disregard of facts and is also inferred from a person’s willful avoidance of facts.

Manufacturing License Agreement—An agreement whereby a U.S. person grants a foreign person an authorization to manufacture defense articles abroad and which involves or contemplates:

1. the export of ITAR controlled technical data or defense articles; or
2. the use by the foreign person of ITAR controlled technical data or defense articles previously exported by a U.S. person. (ITAR, CFR §120.21)

Material Transfer Agreements (MTAs)—A contract that governs the transfer and use of tangible research materials.

Non-Disclosure Agreements (NDAs)—A contract governing the use and disclosure of confidential and proprietary information.

Re-Export—The transfer of articles or services to a new or different end-use, end-user, or destination.

Release—Technology or software is “released” for export through:

1. visual inspection by foreign persons of U.S.-origin equipment, facilities, or documentation;
2. oral or written exchanges of information in the U.S. or abroad; or
3. the application to situations abroad of personal knowledge or technical experience acquired in the U.S.

System Member(s)—Refers to all members of The Texas A&M University System.

Technology—Specific information necessary for the “development,” “production,” or “use” of a product. The information takes the form of “technical data” or “technical assistance.”

Technical Assistance—May take forms such as instruction, skills training, working knowledge, and consulting services. Technical assistance may involve the transfer of “technical data.”

Technical Assistance Agreement (TAA)—An agreement for the performance of ITAR-controlled defense services or the disclosure of ITAR-controlled technical data. (22 CFR § 120.22)

Technology Control Plan (TCP)—A TCP lays out the requirements for protecting export-controlled information and equipment for projects conducted at TAMUT. TAMUT has developed a TCP template for use on such projects.

Technical Data—Includes information “required for” the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles. It may take the form of blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, and instructions written or recorded on other media or devices such as disk, tape, and read-only memories.

Trip Leader—TAMUT employees who conduct an international field trip or short program abroad and are accompanied by a group of students, either graduate, and/or undergraduate.

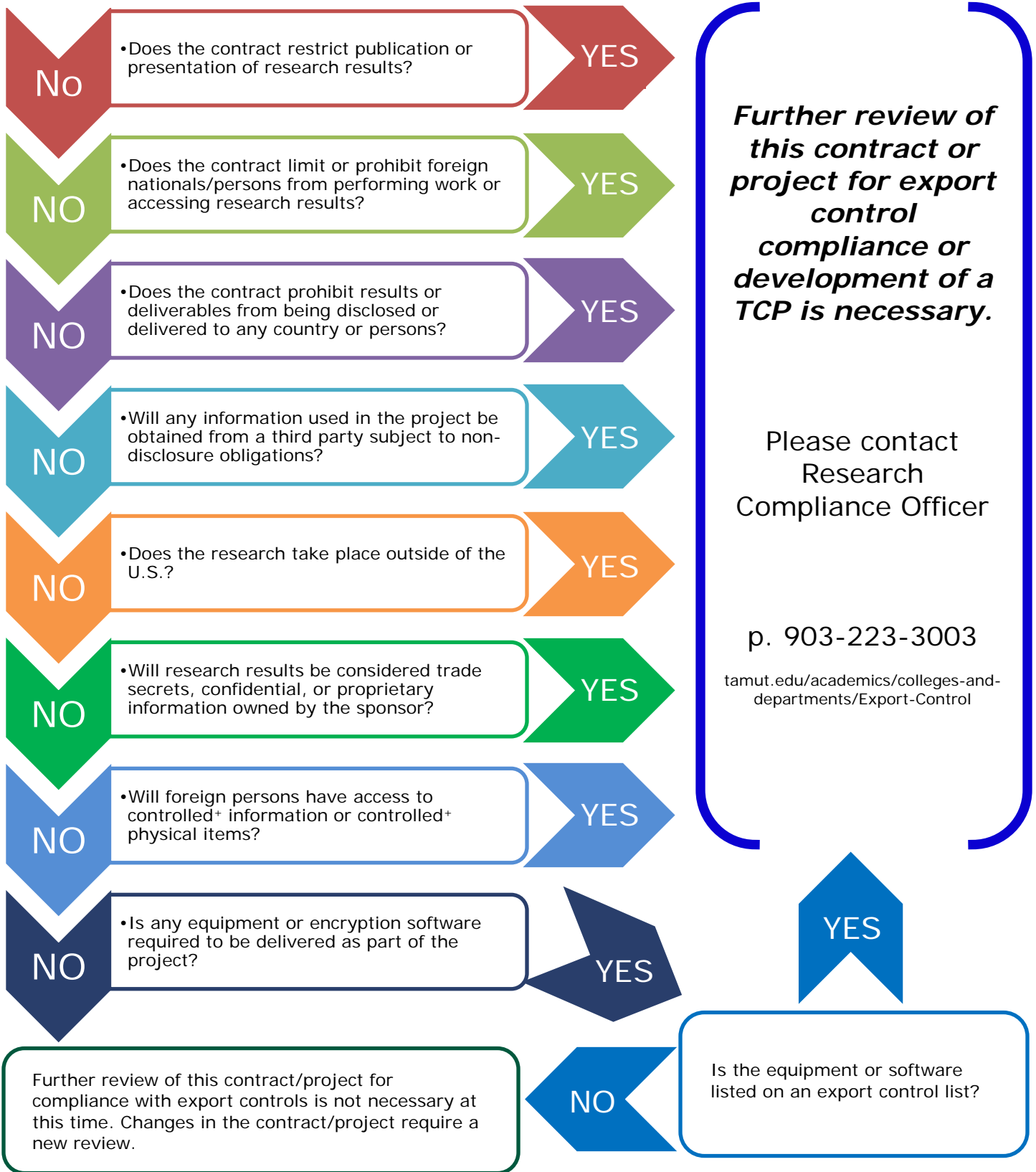
Use—Operation, installation (including on-site installation), maintenance (including checking), repair, overhaul, and refurbishing.

Virtual Private Network—A secure method of connecting to a private network at a remote location, using the internet or any unsecure public network to transport the network data packets privately, with encryption.

Visiting Scholar Host: The TAMUT employee who extends the offer, secures approval for visits, and takes responsibility for overseeing and monitoring the visiting scholar when that individual is accessing TAMUT facilities and TAMUT resources.

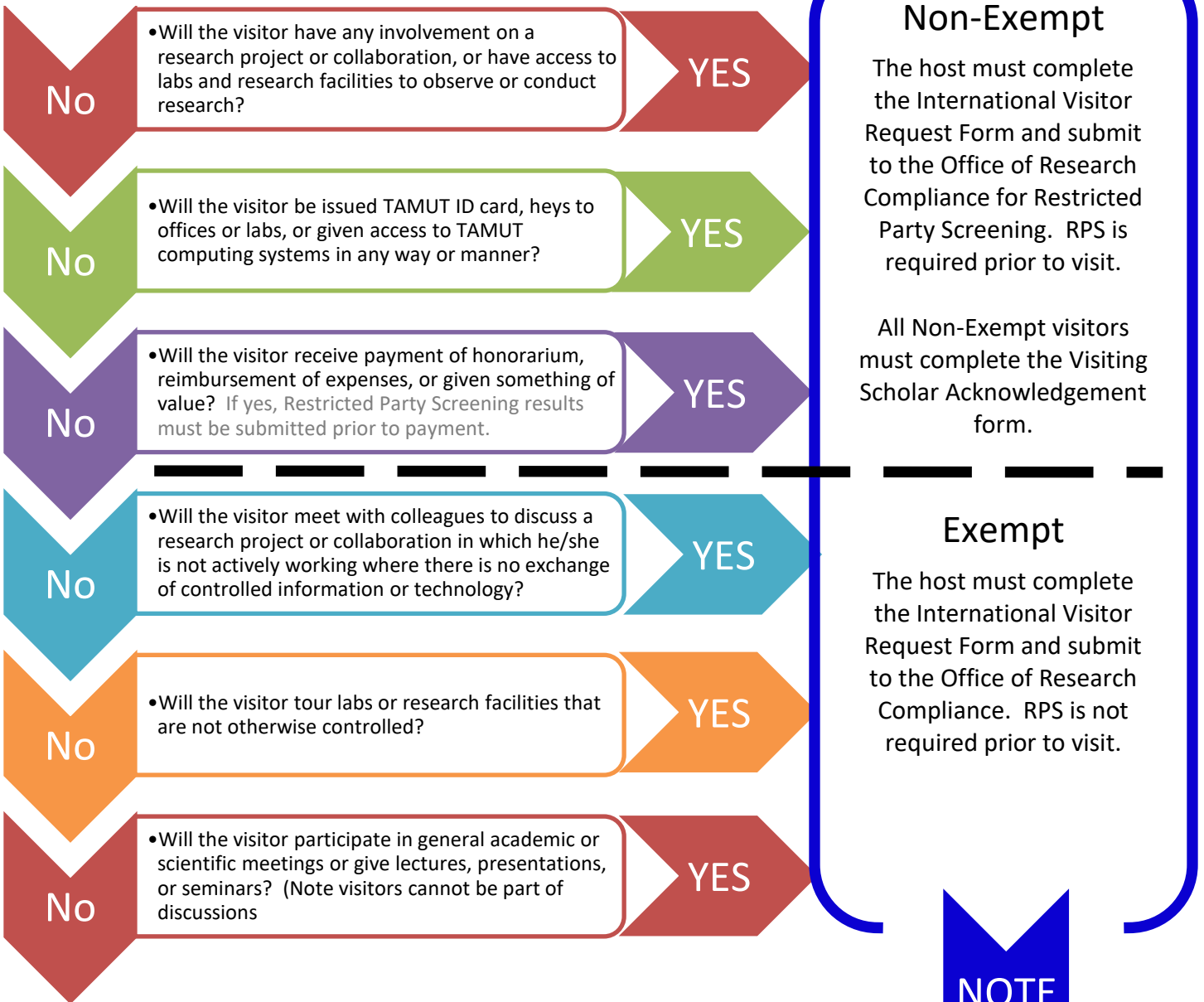
Appendix B | Decision Making Trees

Export Control Decision Making Tree for Administration of Contract Provisions of Concern



Appendix B | Decision Making Trees

Workflow Approval for International Visitors



No Action Needed
For Export Control questions, please contact Research Compliance Office

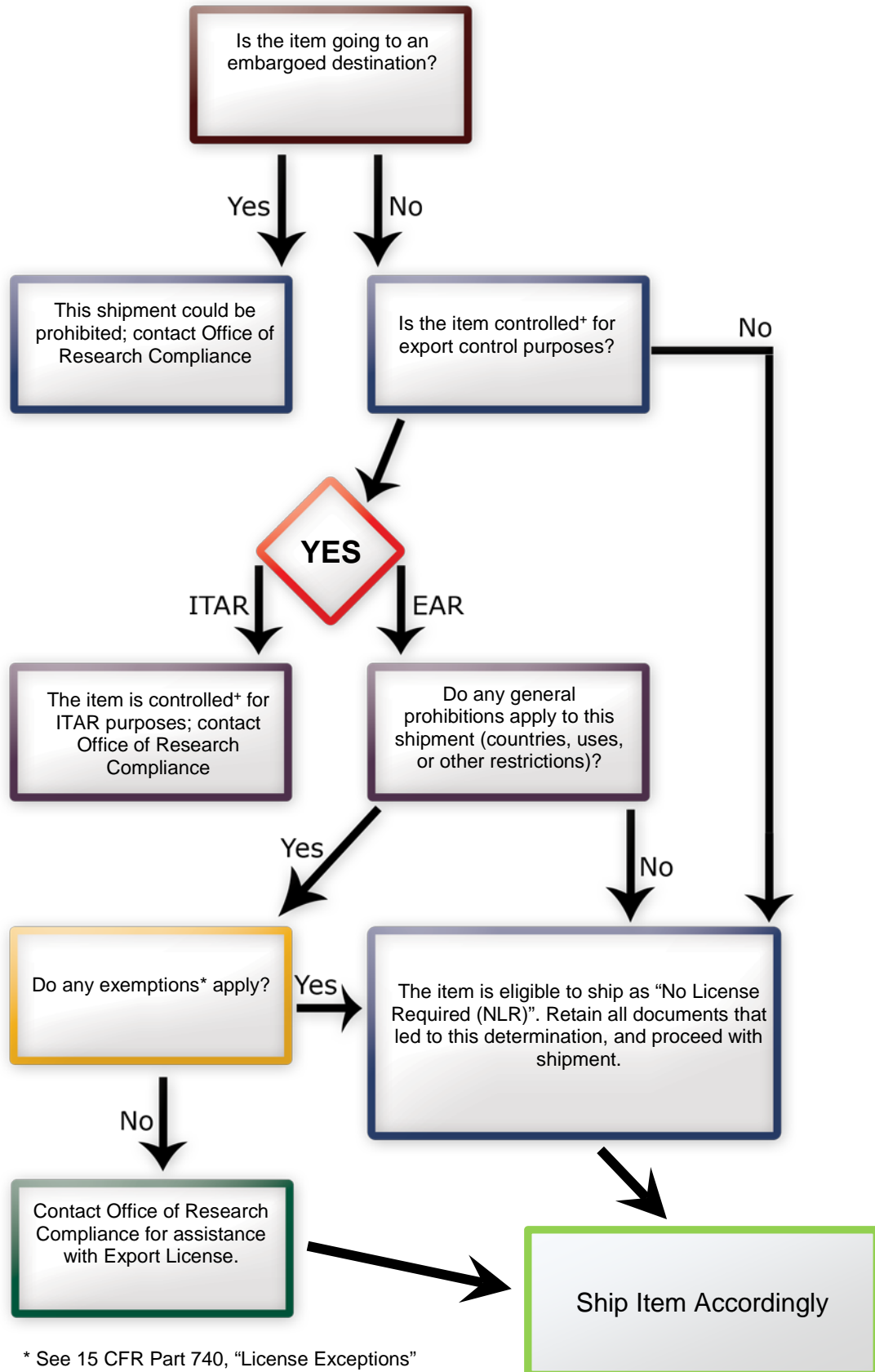
NOTE

TAMUT employees who invite international visitors will assume fiduciary responsibility.

Forms can be located on our Export Controls website. Please submit all forms to the Office of Research Compliance

Appendix B | Decision Making Trees

Export Control Decision Making Tree for Shipping



Appendix C | International Travel Export Screening



Texas A&M University Texarkana International Travel – Export Control Screening

Name of person traveling outside the US:

Dept:

Phone #:

Email:

Name/Phone # of person completing this form:

Dates of Travel:

Date of Request:

Is Request 14 days in Advance:

All requests for travel to non-High Risk areas MUST be requested not less than **14 days** before date of departure. For travel to High Risk areas, the request MUST be submitted not less than 60 days before date of departure.

Please answer **ALL** questions on this form – incomplete forms will result in rejected travel approval. For help filling out this form, see the Export Control Manual under Travel web site or contact the Office of Research Control at 3005 or Office of Compliance and Risk Management at 6755.

1. Do you plan to travel to Cuba, Iran, North Korea, Syria, Sudan, Libya or any other country potentially under embargo or sanctions? If yes, a license may be required or travel may be prohibited. For an up-to-date listing of current travel warnings, click here: <http://assets.system.tamus.edu/files/safety/pdf/travelrisk.pdf>
2. Please list ALL countries to which you are traveling. Note: Export control Issues vary depending on the country and/or part of the country).
3. What is the purpose of your travel?
 - 3a. If you are traveling to a conference or meeting, give the full meeting name, say if you will present or just attend, and give a website, if any. If traveling for another reason, specify information about your trip here.
 - 3b. Who is sponsoring the conference or meeting? Give as much detail as possible about organizations/businesses/individuals.
Export control issues vary depending on the country, what you are taking, what info you are presenting, and the foreign Sponsor/government involved.
4. If you will be presenting at a conference or meeting, has your presentation been vetted for export-controlled data or information? Export-controlled data/information could require a license, and information provided at a conference or meeting must be evaluated for possible export control issues. *If you are unsure, contact the Office of Research Compliance.*
 - 4a. Based on the Export Control training in TrainTraq, would you consider any of the Information in your presentation to be export-controlled?

International Travel Export Screening Feb 2020

4b. If yes to 4a, Is it EAR or ITAR controlled? *If unsure, contact the Office of Research Compliance.*

5. What organization or persons (e.g. companies, universities, or professors) will you visit? Please list:

There are 'denied entites' that we are prohibited from doing Business with, or an expert license may be required.

6. Will you receive compensation for your travel expenses or other compensation from a foreign sponsor or government?

6a. If yes to 6, what foreign sponsor or government?

Export issues could exist if receiving compensation.

7. Do you plan to hand-carry (or ship) a laptop, mobile computing device, smart phone, or other equipment, data, technology or software (other than basic software such as Microsoft Office, Internet Explorer, Adobe, Firefox) when traveling abroad:

7a. If yes to 7, please list specific equipment/technology/software (or attach a list). *An export license or license exception may be required depending on what you are taking and the country you are traveling to. Contact A&M-Texarkana Information Technology for help removing all University-related content from your device or obtaining a clean device for the trip. Enter Site Ticket Number Here:*

7b. If yes to 7, will the above mentioned item(s) be used ONLY as a 'tool of the trade,' (i.e., just to conduct A&M-Texarkana business, such as present at a conference, conduct research, teach, or make phone calls)?

7c. Will all items be returned to the US within 12 months?

7d. If a license or a license or a license exception is required, will the item(s) be under the 'effective control' of A&M-Texarkana personnel while the items are abroad? *Note: 'Effective control' is defined as retaining physical possession of an item or maintaining it in a secure environment such as a hotel safe or a locked or guarded facility.*

8. Do you intend to travel with biological or hazardous materials or scientific instruments containing licensed or hazardous materials?

Some radioactive materials are export controlled and may not be transferred without appropriate authorization.

8a. If yes to 8, do you have VPAA/CRO approval and an export license?

If no, the proper authorizations must be obtained prior to shipment.

9. Have you removed export-controlled information from electronic storage media (laptops, memory sticks, mobile computing devices/smart phones, etc.)? *If yes, no export license required for most countries.*
10. Are you sharing A&M-Texarkana developed, non-commercial encryption software in source code or object code? *If yes, an export license may be required. Check with the Office of Research Compliance.*
11. While you are traveling, will you have or share items, documents, information, or data that are related to export-controlled research? *If yes, an export license may be required. Check with the Office of Research Compliance.*
12. Do you know or have any reason to believe that the information or software to be shared will have a military use (e.g. the design development, production or stockpiling or use of a nuclear explosive device, chemical or biological weapons, or missiles)? *If yes, an ITAR license will be required. Check with the Research Compliance Officer.*
13. Completed Export Controls Training within the past 2 years (TrainTraq #2111212). Date:
14. Completed International Travel Training within the past 2 years (TrainTraq # 2111728). Date:
15. Completed US Foreign Corrupt Practices Act training within the past 2 years (# 21113639). Date:

Signature

Traveler: _____

Date:

Review:

RPS Completed (attach copies of RPS form(s), if applicable):

Guidance provided to traveler (include licenses if applicable):

Empowered Official: _____

Date: _____

Approved: _____

Reason, if denied: _____

Note: All denials may be appealed to the President with a Statement of Justification.

Legend: EAR – Export Administration Regulations (Dept of Commerce); ITAR – International Traffic in Arms Regulations (Dept of State); VPAA/CRO – Vice President Academic Affairs / Chief Research Officer

Appendix D | Technology Control Plan

Note: The form contained in this manual is an Example. Please use most current version available on Export Control web page.

Statement of Commitment

Texas A&M University-Texarkana (TAMUT) is committed to export control compliance. It is the policy of TAMUT to comply with United States export control laws and regulations. All employees and students must be aware of and are responsible for the export control implications of their work and must ensure that their activities conform to export control laws and regulations. Individuals and the university may be subject to severe penalties for violations of export control laws and regulations, including the loss of research funding, loss of export privileges, as well as criminal and civil penalties.

This project/activity/equipment involves or has the potential to involve the receipt and/or use of Export--Controlled Items, Technology, or Information. As a result, the project/activity comes under the purview of either the State Department's International Traffic in Arms Regulations (ITAR)(22 CFR Parts 120 – 130) or the Department of Commerce's Export Administration Regulations (EAR) (15 CFR §§734.8 and 734.9) and/or other export control regulations.

Export--controlled technical information, data, items, software, hardware, biological, and chemicals must be secured from use and/or observation by unauthorized foreign nationals.

In accordance with U.S. export control laws and regulations, a Technology Control Plan (TCP) is required to prevent unauthorized access and/or use of export controlled items, information, technology or software. This document serves as a basic template for the minimum elements of a TCP and the safeguard mechanisms to protect against unauthorized access or use. Security measures and safeguards shall be appropriate to the export classification. Contact the TAMUT Office of Research Compliance (ORC) at (903) 223-3003 or research@tamut.edu for assistance to complete this form.

Establishing a TCP is a multi-step process. The first step is the assessment and approval phase where the principal investigator/responsible individual ("PI") develops a TCP in coordination with TAMUT's Export Controls Program and seeks approval of the plan from the PI's department/unit head, and TAMUT Office of Research Compliance. When all approvals have been secured the PI shall review the TCP with all users, and each user will execute a copy of the briefing and certification form at the end of the TCP outlining individual responsibilities for handling export controlled technology, information and/or items. When all users, including the PI, have executed the TCP briefing and certification, the PI submits all signed documents to TAMUT's Export Controls Program, and retains copies for their files, and implements the TCP. It is the PI's responsibility to notify TAMUT's Export Controls Program of any anticipated changes to the TCP (e.g., personnel, scope of work, safeguards, etc.). All records relating to this TCP will be retained for at least five years from the date this TCP is no longer necessary to protect these items, technology and/or information. Records will be maintained in accordance with the TAMUT record retention policy and 15 C.F.R., Part 762 (EAR); 22 C.F.R. §§122.5, 123.22, and 123.26 (ITAR); and 31 C.F.R. §501.601 (OFAC).

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Title of Project of Activity: (describe project, activity or equipment subject to TCP):	
Identification of sponsor and relevant project number:	
Description of Export Controlled Item, Technology, Information or Software and reason for control:	
Principal Investigator/Responsible Individual:	
Phone:	E-mail:

Identified Export Control Classification Number / ECCN: (e.g. 5D002) <OR> ITAR Category: (e.g. VII (e))
If you do not have the ECCN or ITAR Category, contact your sponsor or program manager for this vital information. This form cannot be processed without the applicable ECCN or the ITAR Category.

Briefing Requirement

The Principal Investigator/Responsible individual is required to brief his or her staff on the requirements of this TCP.

1. Personnel (clearly identify every person, including their country of citizenship, who may have authorized access to the controlled information, technology or item. Attach additional sheets if necessary. Please print.

Name & Citizenship: _____
Name & Citizenship: _____
Name & Citizenship: _____
Name & Citizenship: _____
Name & Citizenship: _____

Any change in personnel will require an amendment of this plan as described below in section 5. On departure of any of the personnel described above, appropriate measures must be implemented to secure the subject matter of the TCP, including collecting all keys and updating access controls.

2. Personnel Screening Procedures: All persons who may have access to export--controlled items, information and/or technology must be listed on the TCP and undergo Restricted Party Screening using export control screening software licensed by Texas A&M. Screening Results will be maintained as part of this TCP.
3. Physical Security Plan: (Data and/or items, technology must be physically shielded in secured lab spaces to prevent observation or possession by unauthorized individuals or during secure time blocks when observation by unauthorized persons is prevented. This would pertain to laboratory management of "work-in-progress")

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Location (include building and room numbers, lab name, etc.): _____

Physical Security (provide a description of your physical security plan designed to protect the item/technology from unauthorized access or unauthorized removal of technical information, data, items, software, hardware, biological and chemicals (e.g. secure doors, limited access, security badges, locked desks or cabinets, secure computers, marking all physical items etc.): _____

Item Storage (Both soft and hard copy data, notebooks, reports and research materials are stored in locked cabinets; preferably in rooms with key---controlled access. Equipment or internal components and associated operating manuals and schematic diagrams containing "export---controlled" technology are to be physically secured from unauthorized access): _____

Servicing of item (provide a description of how this item will be serviced or repaired during its lifetime and how custodial and related services will be addressed, including disposal and destruction): _____

Janitorial Service (provide a description of how this item will be secured during custodial servicing periods.): _____

Destruction or Return of Materials (describe how the export controlled materials will be handled at the end of the project or when they are no longer needed, e.g., shredding, file wipes, hard drive destruction, return to sponsor, etc.): _____

4. Information Security Plan (Appropriate measures must be taken to secure controlled electronic information, including User ID's, password control, SSL etc.) _____

Describe what information security safeguards will be used: _____

5. Amendments: Any changes to the approved plan, including personnel changes and location changes, must be approved in writing.

6. Training / Awareness Program

All participants listed on a TCP must complete export control online basic training (TrainTraq 2111212), sign the Certification for Safeguarding Export Controlled Technology, Information or Items, and be briefed by the PI/Responsible Individual as to the restrictions of this TCP. Additional training is recommended for all

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TAMUT Technology Control Plan February 2020

individuals listed; please contact the TAMUT Office of Research Compliance at (903) 223-3003 to schedule additional training.

Participant Name:	Date Export Control Training Completed
1.	
2.	
3.	
4.	

By signing this TCP, I certify that I have read and understand all clauses found in this TCP. I certify that all information found in this TCP is accurate and complete to the best of my knowledge.

Principal Investigator/Responsible Individual

Signature: _____ Title: _____

Printed Name: _____ Date: _____

Department/Unit Head

Signature: _____ Title: _____

Printed Name: _____ Date: _____

5. Reviewed By:

Signature: _____ Title: Research Compliance Officer

Printed Name: _____ Date: _____

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TEXAS A&M UNIVERSITY - TEXARKANA

Technology Control Plan Briefing and Certification on the Handling of Export-Controlled Information, Items, Technology and Software

BACKGROUND

The subject matter of the Technology Control Plan (TCP) identified below may involve the use of export-controlled information, technology, items or software. The International Traffic in Arms Regulations (ITAR), enforced by the Department of State, and the Export Administration Regulations (EAR), enforced by the Department of Commerce, prohibit sending or taking export-controlled information, items, technology or software out of the U.S. and disclosing or transferring export-controlled information to a Foreign Person inside or outside the U.S. Verbal and visual disclosures are equally prohibited.

- A Foreign Person is defined as any person who is not a U.S. citizen or legal permanent resident of the U.S. There are no exceptions for foreign graduate students or visiting scholars.

Generally, export-controlled means that the information item, technology and software related to the design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, operation, modification, demilitarization, destruction, processing, or use items with a capacity for substantial military application utility requires an export license, or license exception, before it may be physically exported or discussed or disclosed to a Foreign Person. Export-controlled information does not include basic marketing information about function or purpose, general system descriptions, or information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities or information in the public domain. It does not matter whether the actual intended use of export-controlled information is military or civil in nature.

PARTICIPANT'S RESPONSIBILITIES

Participants may be held personally liable for violations of the EAR and the ITAR, with significant financial and criminal penalties as a result. With that in mind, it is extremely important that Participants exercise care and caution in using, disclosing or transferring export-controlled information, items, technology or software with others inside the U.S. and outside without prior authorization from the appropriate federal agency. For example, Participants must identify who among proposed research project personnel and collaborators are Foreign Persons. The State Department or the Department of Commerce (depending on whether the ITAR or the EAR controls the technology) must grant a license authorizing that person access to export-controlled information. Participants must secure access to export-controlled information, items, technology or software to prevent unauthorized access or use. They must clearly identify export-controlled information, items, technology or software and make copies of export controlled information only when absolutely necessary. Participants must securely store export-controlled information in locked filing cabinets, locked drawers, or under password-protected computer files. Participants shall avoid moving export-controlled information from one location to another, if at all possible.

CRIMINAL/CIVIL LIABILITY AND PENALTIES

The penalty for unlawful export and disclosure of export-controlled information under the ITAR is up to two (2) years imprisonment and/or a fine of one hundred thousand dollars (\$100,000). The penalty for unlawful export and disclosure of information controlled under the EAR is the greater of either a fine of up to one million dollars (\$1,000,000) or five (5) times the value of the exports for a corporation and imprisonment of up to ten (10) years and/or a fine of up to two hundred fifty thousand dollars (\$250,000) for an individual. *It is very important to remember that individuals may be held personally liable for export control violations even when performing a project that is funded through the University.*

Principal Investigator/Responsible Official: _____

Department/Unit: _____

Title of Project/Activity: _____

Technology Control Plan Number: _____

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CERTIFICATION

- I hereby certify that I have read and understand this Briefing and Certification. I understand that I could be held personally liable if I unlawfully allow access to or disclose, regardless of form or format, export-controlled information, technology, software, or items to unauthorized persons.
- I understand that the law makes no specific exceptions for non-US students, visitors, staff, postdocs or any other person not pre-authorized under a TCP to access export controlled information, technology, software or items.
- I also acknowledge that I have read the Texas A&M University-Texarkana Technology Control Plan for this project/ activity and have discussed the plan with my supervisor (if not the PI/Responsible Individual) and that I agree to comply with the requirements in the TCP.
- Furthermore, I have taken the University's Export Control Training as set forth in the TCP and as prescribed by University Rule 15.02.99.H1 Export Controls. I agree to immediately contact the TAMUT Office of Research Compliance at (903) 223-3003, with any questions I may have regarding the designation, protection, or use of export- controlled information, technology, software, or items.

Participant
Name:

TCP
Number:

Participant
Signature:

Date:

*Print and execute this BRIEFING and CERTIFICATION for each person who will have access to the export controlled subject matter.

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TAMUT Technology Control Plan February 2020

Appendix E | Restricted Party Screening Request

NOTE: This form is for unit/departmental use only.
This form should be completed by the unit, and not the vendor, etc.
Get most current version from Export Control Web Page



Texas A&M University Texarkana
Restricted Party Screening Request

Name of Requestor: Date:

Department / Title:

Request to Screen: Party Entity Both

Screened Person (full/all names):

Last Name First Name Middle Name

Other Names Listed Country/Citizenship

Address City/State/Country

Screened Entity (company name, bank name, university name, etc):

Names Country

Address City/State/Country

Reason for screening (full description):

EXPORT CONTROL OFFICE USE ONLY

Screener Name Screener Signature Date (MM/DD/YY)

Results:

- No results returned
- Match – found to be a false positive: requires description of how this was determined and secondary screener signature/date
- Match - found to be positive requires secondary screener signature/date

Reason for Determination of False Positive (if applicable):

Secondary Screener Name Secondary Screener Signature Date (MM/DD/YY)

Attach Restricted Party Screening Results Page, return copy to Requestor, file copy in Export Control Office

Appendix F | International Visitor Request

Note: This form is an example. Use current version from Export Control web site.

Texas A&M University - Texarkana
International Visitor Request Form



Host/Supervisor:

Name *Department*

Phone Number *Email*

International Visitor Contact Information:

Start Date *End Date* *Country (Citizenship) and Visa Status*

Last Name *First Name* *Middle Name*

Other Names Listed *Date of Birth*

Address *City/State/Country*

Affiliation (i.e., company name, university name, etc.):

Name *Country*

Address *City/State/Country*

Section 1

Reason for Visit (full description):

Section 2

Purpose of Invitation:		Yes	No
Non-Exempt	Will the visitor have any involvement on a research project of collaboration, or have access to labs and research facilities to observe or conduct research? (If yes, complete section 3 below)	<input type="radio"/>	<input type="radio"/>
	Will the visitor be issued TAMUK ID card, keys to offices or labs, or given access to TAMUK computing systems in any way or manner?	<input type="radio"/>	<input type="radio"/>
	Will the visitor receive payment of honorarium, reimbursement of expenses, or given something of value?	<input type="radio"/>	<input type="radio"/>
Exempt	Will the visitor meet with colleagues to discuss a research project or collaboration in which he/she is not actively working where there is no exchange of controlled information or technology?	<input type="radio"/>	<input type="radio"/>
	Will the visitor tour labs or research facilities that are not otherwise controlled?	<input type="radio"/>	<input type="radio"/>
	Will the visitor participate in general academic or scientific meetings, or give lectures, presentations, or seminars?*	<input type="radio"/>	<input type="radio"/>

*Visitors cannot be part of discussions where there is an exchange of controlled information or technology.

Based on the above responses this visitor's designation is: Non-Exempt** Exempt

**All Non-Exempt visitors must complete the TAMUT International Visiting Scholar Acknowledgment located on the [Forms and Resources](#) section of the TAMUT Export Controls website.

Section 3

Export Controls and Other Research Related Compliance :	Yes	No
Activities are covered by an Institutional Review Board (IRB) study	<input type="radio"/>	<input type="radio"/>
Activities are covered by an Institutional Biosafety Committee (IBC) permit	<input type="radio"/>	<input type="radio"/>
Activities are covered by an Animal Use Protocol (AUP)	<input type="radio"/>	<input type="radio"/>
The research or activity is proprietary	<input type="radio"/>	<input type="radio"/>
Activities involve access or use of items/articles, software, or technology listed on the EAR or ITAR	<input type="radio"/>	<input type="radio"/>
Activities involve access to research or work of with publication restrictions	<input type="radio"/>	<input type="radio"/>
The research or activity has restrictions on participation of foreign national	<input type="radio"/>	<input type="radio"/>
The research or activity references export control clauses or references to EAR or ITAR	<input type="radio"/>	<input type="radio"/>
Activities will involve the use or access to encryption software	<input type="radio"/>	<input type="radio"/>
Activities will be related to the spread or increase of nuclear, chemical, biological weapons, or missiles	<input type="radio"/>	<input type="radio"/>
Activities will involve access to any resources/facilities subject to a Technology Control Plan	<input type="radio"/>	<input type="radio"/>
Activities involve work with any embargoes or sanctioned country	<input type="radio"/>	<input type="radio"/>
The research or activity is classified	<input type="radio"/>	<input type="radio"/>
The research or activity will yield results for military or use in outer space	<input type="radio"/>	<input type="radio"/>
The research or activity is fundamental research	<input type="radio"/>	<input type="radio"/>

If "Yes" is marked on any of the fields listed in section 3, please contact Office of Research Compliance at research@tamut.edu.

International Visitor Request Form

Host/Supervisor:

I have knowledge of the nature of the proposed visit. The answers I have provided are true and correct to the best of my knowledge and belief. I understand that if any changes are anticipated in the nature or duration of the visit or employment prior approval will be required. I hereby certify that I have completed the Export Controls & Embargo Training – Basic Course offered via TrainTraq, and have read System Policy 15.02, *Export Controls* and TAMUT Rule 15.02.99.H1, *Export Controls*. As the host/supervisor, I certify that I am not on development or sabbatical leave and will make every reasonable effort to perform the responsibilities of hosting and supervising the visitor or employee.

Name

Signature

Date (MM/DD/YYYY)

Department Head/Chair:

Name

Signature

Date (MM/DD/YYYY)

OFFICE USE ONLY (Visual Compliance/Export Control Delegates)

Screener Name

Screener Signature

Date (MM/DD/YYYY)

Results:

- No results returned
- Match – found to be a false positive: requires description of how this was determined to be a false positive and (2) secondary screener signature/date
- Match – found to be positive requires secondary screener signature/date

Reason for Determination of False Positive (if applicable):

Secondary Screener Name

Secondary Screener Signature

Date (MM/DD/YYYY)

Attach Restricted Party Screening Results Page

Completed forms and screenings should be retained by your Visual Compliance/Export Control Delegates for 5 years after visit. In cases of a non-exempt international visitor, the Office of International Student & Scholar Services should also maintain this form with relevant visa documents.

Appendix G | Approval of Reimbursement/Honoraria for Foreign Visitor

Note: This form is an example. Use current version from Export Control web site.

Texas A&M University Texarkana
Approval of Reimbursement/Honoraria for Subjected International Visitor



Name of Requestor: _____ Date: _____

Department / Title: _____

Note: Complete this form if international visitors you are hosting are foreign persons having a residence in a foreign country who are not employees or enrolled students of TAMUT, and are coming to TAMUT on a temporary basis as a result of a verbal or written invitation made to the foreign person by a faculty member, researcher, or administrator of TAMUT.

This request is only applicable to international visitors that will not: 1) be involved in a research project or collaboration, and will not have access to laboratories and research facilities for the purposes of observing or conducting research, and or 2) be issued a TAMUT identification card, keys to offices or laboratories, or otherwise be given access to the TAMUT computing system in any way or manner.

If the international visitor you are hosting falls within any of the above activities, you must **NOT** complete this request, but rather the Approval of Visiting Scholars form.

_____ (Department/Unit) requests authorization to Reimburse expenses/
pay honoraria/pay speaker fee to the below international visitor who does not fall within the definition of a visiting scholar and who is not involved in an employer/employee relationship with Texas A&M University – Texarkana.

Screened Person (full/all names):

_____ *Last Name* _____ *First Name* _____ *Middle Name*

_____ *Other Names Listed* _____ *Country/Citizenship*

_____ *Address* _____ *City/State/Country*

_____ *Foreign Employer's Names* _____ *Country*

_____ *Address* _____ *City/State/Country*

Describe the Purpose of the visit:

Attach Restricted Party Screening Results Page, return copy to Requestor, file copy in Export Control Office

Indicate intended payment type: Speaker Fee Reimbursement of Expenses Honoraria

Host Faculty/Staff Member:

Name

Signature

Date

EXPORT CONTROL OFFICE USE ONLY

Results:

Yes	No	Passed RPS for person
Yes	No	Passed RPS for home institution or current employment
Yes	No	Any restrictions? If yes, explain:

Screener Name

Screener Signature

Date (MM/DD/YY)

Appendix H | Visiting Scholar Acknowledgment

Note: This form is an example. Use current version from Export Control web site.

Texas A&M University - Texarkana
Visiting Scholar Agreement

"Participant's Institution/Employer" – Name of University/Organization
"Participant" – Name of individual
"Nominator" – TAMUT Host



VISITING SCHOLAR AGREEMENT BETWEEN

_____ ("Participant's Institution/Employer")
AND

_____ ("Participant")
AND

Texas A&M University - Texarkana

_____ (the "Participant's Institution/Employer"), located at _____
_____ (the "Participant"), and

Texas A&M University - Texarkana, a member of The Texas A&M University System ("TAMUS"), and an agency of the State of Texas (acting on its own behalf and on behalf of any other TAMUS member institution or agency participating in the activities described herein) and referred to as "TAMUT", enter into this Visiting Scholar Agreement (the "Agreement"). TAMUT shall appoint the Participant as a Visiting Scholar/Researcher/Scientist in

_____ under the direction of _____
(the "Nominator"). Each of the foregoing (excluding the Nominator) is referred to as a "Party" or collectively as the "Parties".

In consideration of the mutual promises and covenants described below, the Parties agree as follows:

Section 1. Scope of Agreement

1.1 Purpose of Visit.

The visit by the Participant contemplated by this Agreement is of mutual interest and benefit to TAMUT and to the Participant's Institution/Employer and will further their respective research and scientific objectives in a manner consistent with their individual missions. The Participant shall collaborate with TAMUT personnel at TAMUT's facilities to:

_____ (the "Research/Training").

1.2 Adherence to Policies and Procedures.

The Research/Training shall be performed in accordance with established policies, regulations, and procedures of The Texas A&M University System ("TAMUS") and TAMUT (or other TAMUS member, as applicable), as well as all applicable state and federal laws and regulations including but not limited to research involving human subjects, laboratory animals, hazardous agents and materials, ethical conduct, safety, and conflicts of interest.

Section 2. Period of Performance

This Agreement shall commence on _____, and shall end on _____,

Visiting Scholar Agreement | Page 1 of 8

unless extended by mutual agreement in writing between the parties, or unless terminated by one of the parties as provided in this Agreement.

Section 3. Consideration and Payment

3.1 Consideration.

The Participant's Institution/Employer shall continue to be the employer of record for the Participant and shall be responsible for all compensation to be paid to the Participant, including but not limited to salary and fringe benefits (e.g., health insurance, leave, retirement, etc.). The Participant's Institution/Employer shall be responsible for paying any and all employment withholding taxes, workers compensation insurance, and governmental assessments. The Participant's Institution/Employer is responsible for the Participant's travel expenses while on assignment at TAMUT. The Parties agree that the anticipated benefits of this collaborative research and training shall constitute sufficient consideration for this Agreement to be considered binding.

3.2 Other Costs.

In addition to the costs described in Section 3.1 above, any other fees and expenses will be paid as described below (select appropriate box):

There will be no charge by TAMUT to Participant's Institution/Employer or Participant as a result of this Agreement.

Participant's Institution/Employer has generously agreed to provide TAMUT an unrestricted gift of \$ _____ to cover laboratory expenses associated with the research and training activities conducted under this Agreement.

Participant's Institution/Employer shall reimburse TAMUT for actual laboratory/supply expenses incurred by TAMUT related to Participant's research and training activities conducted under this Agreement. Expenses incurred may be billed by TAMUT to Participant's Institution/Employer monthly, or as TAMUT deems appropriate (e.g. in lump sum). Payment by Participant's Institution/Employer is due within thirty (30) days after receipt of invoice.

Participant's Institution/Employer shall pay a bench fee to TAMUT in the amount of \$ _____. The bench fee will be billed by TAMUT to Participant's Institution/Employer following the execution of this Agreement. Payment of bench fee by Participant's Institution/Employer is due within thirty (30) days after receipt of invoice.

Failure by Participant's Institution/Employer to timely pay an invoice may result in the termination of this Agreement by TAMUT.

Section 4. Notices

All notices or communications to a Party by another Party shall be sent by registered or certified mail, postage prepaid, or express delivery services to the following respective addresses for each party and shall be deemed given on the date so delivered or so deposited in the mail unless otherwise provided.

Participant's Institution/Employer Technical Contact	Participant's Institution/Employer Business Contact
_____	_____
_____	_____
_____	_____
_____	_____
TAMUT Technical Contact	TAMUT Business Contact
_____	Texas A&M Texarkana - Office of Research Compliance
_____	Dr David Yells
_____	7101 University Ave., Texarkana TX 75503
_____	research@tamut.edu; 903-223-3003

Participant

Section 5. Publicity

None of the Parties shall use the name of the other Parties, nor of any of the names of the other Parties employees or Affiliates, nor any adaptation thereof in any advertising, promotional or sales literature or news release without the prior written consent obtained from the other Party, as applicable in each case. Any marketing, advertisements, or publicity statements referring to the Research/Training results of this Agreement shall be worded so as not to imply, directly or indirectly, endorsement by TAMUT (or other TAMUS member, as applicable) of a specific product or producer and shall reflect credit on TAMUT (or other TAMUS member, as applicable), TAMUS, their personnel and activities under this Agreement.

Section 6. Independent Contractor

The Participant will continue to be the assignee and employee of the Participant's Institution/Employer at all times. TAMUT will exercise administrative control and technical supervision over the Participant's Research/Training activities during the term of the visit. At no time during the term of this Agreement will Participant be an employee of TAMUT. For the purposes of this Agreement, the Participant's Institution/Employer and TAMUT be, and shall be deemed to be, independent contractors and not an agent, representative, or affiliate of the other Party. Neither Party shall have authority to make any statements; representations; commitments of any kind, or to take any action which shall purport to be binding on the other Party, except as may be explicitly provided for herein or authorized in writing.

Section 7. Confidentiality

7.1 Overview.

A primary reason for the Participant's presence at TAMUT is the collaborative interaction between the Participant and the TAMUT research and diagnostic community, including faculty, researchers, diagnosticians, and students. During the course of this Agreement, however, the Participant may receive or be exposed to information or material which TAMUT (or other TAMUS member, as applicable) considers confidential or proprietary, or both and which it wishes to be held in confidence by the Participant or Participant's Institution/Employer, or both. In such situations the following provisions shall apply.

7.2 Confidential Information Defined.

For purposes of this Agreement, "Confidential Information" means nonpublic information that is identified or designated as being confidential or which, in light of the circumstances under which it was disclosed, whether oral or written, is reasonably apparent to the Participant to be considered confidential or proprietary by TAMUT (or other TAMUS member, as applicable). "Confidential Information" includes, without limitation, information which may be contained in materials such as inventions, discoveries, concepts, ideas, methodologies, research data, research results, drawings, plans, programs, software, codifications, models, data, specifications, reports, compilations and may also be in the nature of unwritten knowledge and know-how.

7.3 Obligations & Restrictions.

(a) Except as required by law, the Participant and Participant's Institution/Employer must receive and hold such Confidential Information in confidence to the same degree of care that Participant's Institution/Employer uses with its own information of like kind to prevent its disclosure to third parties. Subject to any exception(s) herein, the Participant and Participant's Institution/Employer hereby agree that, with respect to any Confidential Information that is acquired by Participant during his/her tenure at TAMUT (or other TAMUS member, as applicable), Participant and Participant's Institution/Employer must:

- i. hold the Confidential Information in strict confidence and not disclose, or cause or permit the disclosure of the Confidential Information, except as permitted under this Agreement or with the prior written consent of TAMUT (or other TAMUS member, as applicable);

- ii. keep the Confidential Information and any documents created by Participant which incorporate Confidential Information, secure and protected from any use, disclosure or access which is inconsistent with this Agreement;
- iii. use the Confidential Information only for research or training purposes as related to Participant's collaborative efforts at TAMUT (or other TAMUS member, as applicable);
- iv. do anything required by TAMUT to restrain a breach of this Agreement or any infringement of TAMUTs (or other TAMUS member's, as applicable) rights arising out of this Agreement by any person, whether by court proceedings or otherwise;
- v. obtain the written consent of TAMUT, through the TAMUT Director's Office or Dean (if appropriate), before he/she applies for, or directly or indirectly assist any other person, company or institution to apply for, any patent, design or other industrial or intellectual property or proprietary right in respect of any invention, process, or design that is based on or utilizes the Confidential Information;
- vi. not contest or oppose, or attempt to invalidate, any application for or any industrial or intellectual property or proprietary right of TAMUT (or other TAMUS member, as applicable) that is based on or utilizes the Confidential Information; and
- vii. not use the Confidential Information to compete against TAMUT (or other TAMUS member, as applicable).

(b) Participant may, however, report to Participant's Institution/Employer on his/her personally obtained research results. Participant may report on such results only when their disclosure does not lead to acquisition of unpublished TAMUT (or other TAMUS member, as applicable) results or other TAMUT (or other TAMUS member, as applicable) intellectual property by Participant's Institution/Employer or any third party. All reports containing technical information by Participant to Participant's Institution/Employer, or to a third party, will be accompanied by an English translation if necessary, which must be reviewed and approved by Nominator in advance of transmittal of any report containing technical information. No other technical information will be transmitted or disclosed by Participant. TAMUT shall have the right to use and disclose all data/research results generated by Participant for any purpose. Participant must comply with any obligation of confidentiality owed to a third party by TAMUT in accordance with the terms and conditions agreed between TAMUT and the third party.

7.4 Period of Confidentiality.

The period of confidentiality shall expire five years from the expiration or termination of this Agreement or the disclosure of the Confidential Information, whichever is longer unless otherwise agreed. Note: The period of confidentiality related to Texas A&M Veterinary Medical Diagnostic Laboratory confidential information such as client information, client results, or diagnostic trends shall remain confidential permanently.

7.5 Exceptions.

The Participant's Institution/Employer or Participant shall not be obligated to keep as confidential information received from TAMUT (or other TAMUS member, as applicable) if any such information (a) was already in the possession of the Participant's Institution/Employer or Participant as evidenced by existing documentation, prior to the receipt of the information from TAMUT (or other TAMUS member, as applicable); (b) appears in issued patents or printed publications; (c) which is now or hereafter becomes generally available to the public on a non-confidential basis through no fault or failure to act on the part of the Participant's Institution/Employer or Participant; (d) is disclosed to the Participant's Institution/Employer or Participant by third parties having a bona fide right to make such disclosure; or (e) is ordered produced or disclosed by a court or administrative body of competent jurisdiction, the Attorney General of Texas, or otherwise required by law.

7.6 Ownership of Confidential Information.

All Confidential Information disclosed under this Agreement shall remain the property of TAMUT (or other TAMUS member, as applicable). At TAMUT's request, all Confidential Information received by Participant's Institution/Employer or Participant in tangible form shall be promptly returned or destroyed.

7.7 No License Granted.

Nothing in this Section 7 shall be construed as an offer to grant or as granting a license to any patent, copyright, know-how, trade secret or other form of intellectual property to any other Party.

Section 8. Publications

8.1 Publishing Rights.

The timing, extent and content of all publications regarding the results of the Research/Training under this Agreement, including those of the Participant, shall be at the discretion of TAMUT and the Nominator.

Section 9. Intellectual Property

9.1 Agreement Intellectual Property Defined.

The term "Agreement Intellectual Property" shall mean, individually and collectively: (a) inventions, discoveries, and/or improvements which are conceived or first reduced to practice, whether or not patentable, in the performance of the collaborative research efforts under this Agreement; and (b) all works of authorship created, prepared and/or developed (including compilations) in the performance of the collaborative research efforts under this Agreement that are the subject matter of copyright under Title 17 of the United States Code.

9.2 Pre-Existing (Background) Intellectual Property.

Each Party retains title to any of its pre-existing intellectual property (e.g., patents; non-patented discoveries and inventions; copyrights; technical know-how; trade secrets; etc.) that it may use or provide for use in these collaborative research efforts. Except as otherwise specifically stated in this Agreement no rights in pre-existing intellectual property are granted by license or otherwise by one party to the other.

9.3 Intellectual Property Rights Arising During Visit.

Title to any Agreement Intellectual Property conceived and/or reduced to practice by the Participant during the course of performing the Research/Training activities described in this Agreement shall be, and are hereby, assigned to TAMUS on behalf of TAMUT (or other TAMUS member, as applicable) in accordance with TAMUS's Intellectual Property Policy. TAMUT (or other TAMUS member, as applicable) shall own all tangible research results and intellectual property generated by the Participant during his/her tenure at TAMUT, including but not limited to know-how, original data, computer programs, and records of the work and activities performed.

9.4 Duty to Disclose.

Participant shall promptly notify the Nominator and TAMUT of any Agreement Intellectual Property arising out of the performance of the Research/Training activities performed under this Agreement. The Parties shall keep in confidence all information contained in disclosures and notifications relating to Agreement Intellectual Property before and during any period prior to the application for a patent or other legal protection of such Agreement Intellectual Property.

9.5 Rights in Data.

TAMUT (or other TAMUS member, as applicable) shall own all research data, diagnostic data, and information generated by the Participant while he or she is participating in Research/Training activities described in this Agreement. Although owned by TAMUT, TAMUT agrees to make copies of information generated by the Participant's discoveries available to the Participant's Institution/Employer on a confidential basis through the Participant, to the extent permitted by law or preexisting contractual commitments to third parties, and subject to TAMUT's Intellectual Property Policy and/or Guidelines.

9.6 Third Party Support.

To the extent the collaborative research efforts under this Agreement are supported by a grant, cooperative agreement, or contract between TAMUT (or other TAMUS member, as applicable) and the U.S. Government or other third party, the Nominator, Participant, and Participant's Institution/Employer must comply with the intellectual property provisions of such U.S. Government or third-party grant, cooperative agreement, or contract as determined by the TAMUT Director, Executive Associate Director, or Dean (if appropriate).

Section 10. Disputes

10.1 Informal Resolution.

The Parties shall make a good faith effort to resolve in an amicable manner any disputes that may arise from this Agreement.

10.2 Governing Law.

The validity, interpretation, and enforcement of this Agreement shall be governed and determined by the laws of the State of Texas without regard to its conflicts of laws principles.

Section 11. Indemnity and Liability

11.1 Indemnity.

The Participant's Institution/Employer shall defend, indemnify and hold TAMUT (or other TAMUS member, as applicable), its officers, employees, and agents harmless from and against any and all liability, loss, expense, (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of the Participant's Institution/Employer or its officers, employees, or agents (including without limitation the Participant).

11.2 Limitation of Liability.

TAMUT (or other TAMUS member, as applicable) shall not be liable to the Participant's Institution/Employer for direct, indirect, special, consequential, punitive, exemplary, incidental, or other damages (including but not limited to lost revenue, profits, use, data, or other economic loss or damage) however caused and regardless of theory of liability (whether for breach of contract or tortious acts) arising from, related to, or connected with the Participant's Institution/Employer's use of TAMUT (or other TAMUS member, as applicable) scientific or laboratory equipment, data, inventions, copyrights, or other research results provided by TAMUT (or other TAMUS member, as applicable), even if TAMUT (or other TAMUS member, as applicable) was advised of the possibility of such loss or damage and even if such loss or damage results from the sole, joint, or concurrent negligence, negligence per se, statutory fault, or strict liability of TAMUT (or other TAMUS member, as applicable).

11.3 Assumption of Risk and Release.

Participant understands and agrees that he/she will not be covered by any health and/or accident insurance while using TAMUT (or other TAMUS member, as applicable) facilities. Participant understands and acknowledges there is a risk of injury from using TAMUT (or other TAMUS member, as applicable) facilities and equipment, including the potential for serious injury. Participant voluntarily assumes the risk of any injuries he/she may incur due to negligence or accidental occurrences while Participant is using TAMUT (or other TAMUS member, as applicable) facilities and equipment. Participant agrees that if he/she is personally injured or suffers any loss of or damage to personal property, Participant will not attempt to claim coverage under any TAMUT (or other TAMUS member, as applicable) insurance policy. Participant agrees to be personally responsible for his/her own acts and for any medical care that may be rendered to Participant. Further, Participant voluntarily assumes the risk of damage to or loss of his/her personal property that may occur during Participant's use of TAMUT (or other TAMUS member, as applicable) facilities and equipment. Participant, personally and on behalf of Participant's heirs, personal representatives or assigns, hereby releases, waives, covenants not to sue, indemnifies and holds harmless for any and all purposes TAMUT (or other TAMUS member, as applicable), TAMUS, the Board of Regents for TAMUS, and their respective members, officers, agents, volunteers, or employees ("Releasees") from any and all liabilities, claims, demands, injuries (including death), or damages, including court costs and attorney's fees and expenses, which may occur to Participant as a result of Participant's activities under this Agreement while on the premises owned, leased, or controlled by Releasees, including injuries sustained as a result of the sole, joint, or concurrent negligence, negligence per se, statutory fault, or strict liability of Releasees. This waiver does not apply to injuries caused by intentional or grossly negligent conduct. Participant hereby gives consent for any medical treatment, rescue or evacuation services that may be required (as determined by Releasee staff, medics, emergency personnel, or other medical professionals) during the performance of this Agreement with the understanding that the cost of any such treatment will be Participant's responsibility. Participant, including Participant's heirs, personal representatives, or assigns, agrees to indemnify and hold harmless Releasees for any costs incurred to treat Participant, even if Releasee has signed medical care facility documentation promising to pay for the treatment due to Participant's inability to sign the documentation. Participant, including Participant's heirs, personal representatives, or assigns, further agrees to release, waive, covenant not to sue, and agree to hold harmless for any and all purposes, Releasees from any and all liabilities, claims, demands, injuries (including death), or damages, including court costs and attorney's fees and expenses, that may be sustained by Participant while receiving medical care or in deciding to seek medical care, including while traveling to and from a medical care facility, including injuries sustained as a result of the sole, joint, or concurrent negligence, negligence per se, statutory fault, or strict liability of Releasees. This waiver does not apply to injuries caused by intentional or grossly negligent conduct.

Section 12. Compliance

12.1 Compliance.

The Participant and Participant's Institution/Employer will comply, and Participant's Institution/Employer will be responsible for Participant's compliance, with all local, state and federal laws, rules and regulations that apply to the performance of this Agreement, including but not limited to those governing: export control (including but not limited to Export Administration Regulations (15 CFR Part 730, et seq); International Traffic in Arms Regulations (22 CFR Part 120,

et seq); and Foreign Assets Controls (31 CFR Part 500, et seq)); animal welfare; human subject research; workplace safety; and handling, storage, use and disposal of biological materials, chemicals, hazardous or radioactive materials. The Participant's Institution/Employer also will be responsible for the Participant's compliance with all applicable TAMUT (or other TAMUS member, as applicable) policies while on TAMUT (or other TAMUS member, as applicable) premises.

12.2 Background Check.

The Participant hereby gives TAMUT permission to inquire into his/her education, references, driving record, employment, volunteer history, and criminal background. The Participant further gives permission to the holder of such records to release the same to TAMUT (or other TAMUS member, as applicable). The Participant understands that TAMUT (or other TAMUS member, as applicable) will only use this information for the purpose of this Agreement.

Section 13. Termination

13.1 Convenience.

Performance under this Agreement may be terminated by either Party upon thirty (30) days written notice. Participant's Institution/Employer will remain liable for any fees/costs due and owing to TAMUT through the date of termination pursuant to Section 3 above.

13.2 Default.

In addition to the termination right set forth above, a Party may terminate this Agreement effective upon written notice to the other Parties, if another Party breaches any of the terms and conditions of this Agreement and fails to cure such breach within thirty (30) days after receiving written notice thereof. In the event of an incurable breach, the other Party may terminate this Agreement effective immediately upon written notice to the breaching Party.

13.3 Obligations of Confidentiality and Intellectual Property Terms upon Termination.

Obligations of confidentiality as stated in Section 7 and the intellectual property terms as stated in Section 9 shall survive the termination of this Agreement.

Section 14. Miscellaneous Provisions

14.1 Entire Agreement and Modification.

This Agreement constitutes the entire agreement between the Parties relative to the subject matter, superseding and cancelling all previous, all prior and contemporaneous oral or written agreements, discussions or understandings related to the subject matter, and may be modified or amended only by a written amendment signed by all Parties.

14.2 No Assignment.

This Agreement will not be assigned, in whole or in part, by any Party without the prior written consent of the other Parties. Any attempt to do so shall be void.

14.3 Binding Agreement.

This Agreement is binding upon and will inure to the benefit of the Parties, their representatives, successors in interest, and permitted assigns.

14.4 No Waiver.

The failure of a Party at any time to require performance by another Party of any provision of this Agreement will in no way affect the right to require such performance at any time thereafter nor will the waiver by a Party of a breach of any provision be taken or held to be a waiver of any succeeding breach of such provision or as a waiver of the provision itself.

14.5 Severability.

If any provision of this Agreement is held to be invalid, illegal or unenforceable, then such provision will be severed and will not affect the remainder of this Agreement.

14.6 Force Majeure.

If any Party fails to fulfill its obligations hereunder (other than an obligation for the payment of money), when such failure is due to a circumstance beyond its reasonable control, including but not limited to fire, flood, civil commotion, riot, acts of God, war (declared and undeclared), revolution, acts of foreign or domestic terrorism, or embargos, then said failure shall be excused for the duration of such event and for such a time thereafter as is reasonable to enable the Parties to resume performance under this Agreement, provided however, that in no event shall such time extend for period of more than thirty (30) days.

The Parties have executed this Agreement on the day and year last specified below:

Participant's Institution/Employer

By: _____
(Signature)

Name: _____

Title: _____

Date: _____

Participant

By: _____
(Signature)

Name: _____

Title: _____

Date: _____

Nominator (Acknowledgment – Not a Party)

By: _____
(Signature)

Name: _____

Title: _____

Date: _____

EXAMPLE

Appendix I | Traveling with Laptops

Below are recommended protocols when preparing to travel internationally with laptops.

- Avoid taking laptops if possible.
- Backup any data, and leave a safe copy of any DATA files at office prior to departure.
- If taking a laptop is required then password-protect, encrypt or remove all student, personal, and proprietary information stored on your laptop.
- Make sure the system patches and antivirus is updated and the laptop FIREWALL is turned on.
- Install the TAMUT VPN software by contacting IT with an iSITE ticket before departure, and utilize a VPN connection at all times while in foreign country.
- Hand carry AG-710.
- If items or information are stolen while traveling abroad, travelers shall promptly contact TAMUT Information Technology (903-334-6603; ISITE@tamut.edu) and TAMUT Office of Research Compliance (903-223-3003; research@tamut.edu).

While traveling, carrying laptops could fall under the temporary license exclusion known as the “tools of the trade” exclusion. EAR makes an exception to licensing requirements for the temporary export or re-export of certain items, technology, or software for professional use as long as the criteria below are met. The exception does not apply to any EAR satellite or space-related equipment, components, or software, or to any technology associated with high-level encryption products. In addition, this exception does not apply to items, technology, data, or software regulated by the ITAR. Note that this license exception is not available for equipment, components, or software designed for use in/by/with most satellites or spacecraft. “Effective control” means retaining physical possession of an item or maintaining it in a secure environment. Temporary exports under the “tools of the trade” license exception (as defined in Appendix B) apply when the laptop, PDA, cell phone, data storage devices, and encrypted software are:

- hand-carried with the individual while traveling;
- carried in the luggage or baggage that travels with the individual; or
- shipped no more than thirty days prior to the individual’s departure or may be shipped to the individual at any time while the individual is outside the country.

Generally, no government export license is required so long as an individual:

- retains his or her laptop computer, PDA, cell phone, data storage devices, and encrypted software under their personal custody and effective control for the duration of travel;
- does not intend to keep these items in these countries for longer than 1 year; and
- is not traveling to an embargoed country.

You may utilize a wiped laptop, as recommended. However, in doing so, please be aware of the extensive process in preparing such laptops. Note: Contact TAMUT IT a minimum of 2 weeks prior to any trip when requesting a “clean loaner” laptop.

Appendix J | Applicable ORC Procedures

Export control screening of projects/contracts is a two-step process. The first step consists of Project/Contract Screening which involves screening the substance of the project/contract using the Required Assurances form in Maestro. The second step is known as Restricted Party Screening. This involves screening the parties and entities involved on a project/contract using export control screening software licensed by Texas A&M University known as Visual Compliance.

Proposal Stage:

Upon receiving notification from a PI that a proposal is to be submitted, the Proposal Administrator sends to the PI the attached Required Assurances / PI Compliance Statement form located within Maestro. The PI then checks "yes" or "no" to a series of questions. Upon receiving the completed form from the PI, the Proposal Administrator, following the form, checks "yes" or "no" on the Proposal Compliance screen in Maestro. *(At some point in the near future, it is anticipated that the PI will login directly to Maestro to complete the questions online.)* Maestro shall send electronic notifications to the system member point of contact for export controls based upon affirmative answers to these questions.

Contract Stage:

At the contract stage, the Contract Negotiators verify if any updates to the questions completed on the Required Assurances Form at the proposal stage are necessary based upon their review of the proposed agreement.

In addition to the foregoing, a restricted party screening is performed on all contracts and subawards as needed¹. Below are the procedures for performing a restricted party screening:

1. All names (whether company or individual) of the other parties involved in the project/contract are entered into the Visual Compliance Web site search engine using the "Fuzzy Level 4" search criteria.
2. In the event of a positive match resulting from the Visual Compliance search, the individual performing the search will submit the screening results to the System member point of contact for export controls for further review and approval.
3. Each search result performed by ORC from Visual Compliance and any related documentation provided by the System member will be loaded into the appropriate administration database system with its respective record.

¹*Restricted party screenings are performed for all sponsors except state and federal entities, and for all subawardees except for intrasystem agreements and state and Federal subawardees.*

Appendix K | HR Immigration & Export Forms

Immigration Services for Faculty & Scholars
1158 TAMU
College Station, TX 77843
phone: 979-862-1719
fax: 979-458-1738
<http://ifss.tamu.edu>



Export Control Review & Certification

Employee's Name System Member

Employee's Title Department

Employee's Countries of Citizenship & Nationality

Employee's Foreign Institution(s)

Employee's Visa Status

Complete the questionnaire below to determine whether or not a license (prior authorization) is required from either the U.S. Department of Commerce or the U.S. Department of State to allow this foreign national employee access to export controlled items or technology (laboratory equipment, test instruments, materials, software or technology/technical data) controlled under the [Export Administration Regulations \(EAR\)](#) or [International Traffic in Arms Regulations \(ITAR\)](#).

The questionnaire must be completed and signed by the Principal Investigator or other appropriate University authority with direct oversight of the visa applicant's work.

1. Will the visa applicant be working in one of the following areas: biomedical sciences, computer sciences, space or space launch sciences, or **any** engineering or scientific discipline? Engineering or scientific disciplines may include **but are not limited to** the following: Chemical, Electrical, Semiconductor, Materials Science, Physics, Mechanical, Geophysical, Marine, Aerospace, Astronomy, Nuclear, Artificial Intelligence or Robotics.

Please provide brief explanation of work assignment

Check one:

- No, the assignment will not involve, expose or *potentially* expose the applicant to any scientific discipline, including but not limited to the ones listed above. Please sign and date this form below and submit it to Immigration Services for Faculty & Scholars in conjunction with your processing request.
- Yes, the assignment will involve, expose or *potentially* expose the beneficiary to a scientific discipline (including but not limited to one or more of those listed above). You are required to check **all** the boxes for questions 2-7 below and sign and date at the bottom. If you do not have the information necessary to complete this certification, please contact your Export Control Office to complete the processing of this certification questionnaire. If, by virtue of the question, you are unable to check one of the following boxes, your Export Control Office will work with you to further determine whether the work intended for the visa applicant requires prior export control authorization from a governing U.S. agency or requires a Technology Control Plan to temporarily or permanently restrict access by the beneficiary to only what is not export controlled.

2. The visa applicant will **not** be working under a sponsored research agreement (e.g. grant or contract) that restricts or prohibits the participation of foreign persons, i.e. there are no restrictive clauses pertaining to foreign nationals or non U.S. persons participating in the research.
3. The visa applicant will **not** be working under a sponsored research agreement (e.g. grant or contract) that restricts or prohibits the research team's right to publish any of the data or research results, except for the sponsor's right to review and exclude from intended publication proprietary data that, under the terms of the Agreement, is exempt from publication.
4. In performing the work under the visa, the visa applicant will **not** be provided access (whether or not actually required for his/her work assignment and whether through hard or soft copy) to:
- Any export controlled technical data, project or instrument currently secured through a Technical Control Plan (TCP);
 - Technical data or information that has been stamped or otherwise designated by the sponsor or collaborating institution as being "export controlled";
 - Sponsor or third-party proprietary or confidential information, materials, or software that is the subject of a Non-Disclosure Agreement (NDA) or equivalent confidentiality agreement;
 - Proprietary (to sponsor or a third-party) technology for the development of cryptographic or proprietary source code containing cryptographic functionality; and
 - Information pertaining to the "use" or "development" or "production" of instruments, materials, software or scientific processes (technology) that is **not** in itself the subject or result of fundamental research (i.e. 3rd party technology or TAMU proprietary technology considered outside fundamental research for purpose of this question):
 - "use" means that all of the following 6 types of activities are included: Operation, installation, maintenance, repair, overhaul and refurbishing. (For Space-related research only: "use" means only one of the foregoing activities).
 - "development" is related to all stages of the serial production, such as: design research, design analysis, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration of components.
 - "production" means: production engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.
5. In performing the work under the visa the visa applicant will **not** be provided access to research equipment, instruments, materials, software, and/or technical data in any form (e.g. blue print, sketches, specifications, documented technology, vendor operational manual/instructions) or data results that is governed under the ITAR.

ITAR covers any item (equipment, instruments, materials, software, and/or technical data as exemplified above) *specifically* designed, developed or modified for military, defense or space applications) and may include such items whether procured from a vendor, or otherwise received by a research sponsor or collaborating research institution. For a list of the high level **ITAR** categories that identify such defense, military and space items please see (http://www.pmdtc.state.gov/regulations_laws/itar_official.html). For purposes of this certification, "access" means any visual or physical access to the item, regardless of whether such access is actually required by the visa applicant to perform his/her work assignment.

6. With respect to the technology or technical data that I will release or otherwise provide access to this employee as a result of the employment, I certify that (check all that apply):
- I have read [System Policy 15.02](#) on Export Controls.
 - I have reviewed the [Export Administration Regulations](#) (EAR) and the [International Traffic in Arms Regulations](#) (ITAR) with regard to such technology or technical data.
 - I have contacted my Export Control Office to further clarify potential restrictions regarding such technology or technical data.
 - I have reviewed grant(s) with Sponsored Research Services.

7. Most research related exports are likely to be excluded from EAR and ITAR export controls (see [TAMUS regulation 15.02](#) for information on possible exclusions). My findings indicate that the research activities for this employee are excluded from EAR and ITAR export controls based on the following:

- Fundamental Research Exclusion
- Publicly Available/Public Domain Exclusion
- Educational Information Exclusion

Comments

Certifications & Approvals

I hereby certify that I am personally knowledgeable with the job duties and other particulars of employment of the visa applicant listed above, and hereby affirm that the contents of the foregoing certification remains true to the best of my knowledge, information and belief.

I further understand that failure to accurately complete this questionaire can result in U.S. Government export control violations for which civil and criminal penalties can be assessed against the undersigned if found to have caused or facilitated a violation, and/or (ii) my institution.

PI/Faculty Sponsor

Date

Title

Deemed Export Control Attestation (for H-1B and O-1 petitions only)

The United States Citizenship and Immigration Service requires that an employer, when filing an H-1B or O-1 petition, certify that (i) it has reviewed the [Export Administration Regulations \(EAR\)](#) administered by the U.S. Department of Commerce and the [International Traffic in Arms Regulations \(ITAR\)](#) administered by the U.S. Department of State, and (ii) it has determined whether or not a license (prior authorization) is required from either of these Government agencies to allow an employee who is a foreign national access to export controlled items or technology (laboratory equipment/research instruments, materials, software or technology/technical data) controlled under the EAR or ITAR. The transfer or release to a foreign national of such items by any means is "deemed" to be an export to the foreign national's country of citizenship or permanent residence, potentially requiring an export license unless a particular authorized license exemption applies.

Based on my responses to the Export Control Review, I, the employee's supervisor, have determined that:

- A license is not required from either the U.S. Department of Commerce or the U.S. Department of State to release such technology or technical data to the above named foreign person; or
- A license is required from the U.S. Department of Commerce and/or the U.S. Department of State to release such technology or technical data to the foreign person and I will prevent access to the controlled technology or technical data by the named foreign person until and unless Texas A&M University has received the required license or other authorization to release it to the named foreign person.

I certify under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Signature of Supervisor

Name

Date

Date Export Control & Embargo Training completed

I certify that that I have reviewed the Export Control Questionnaire and Deemed Export Control Attestation and have discussed, as needed, its content with the supervisor to ensure its accuracy.

Signature of Department Head

Name

Date

Date Export Control & Embargo Training completed

FS Restricted Party Screening

For ISFS use only.

Passed National of Sanctioned Country No Yes

Passed Denied Persons List No Yes

Passed Entity List No Yes

Name of Screener

Title of Screener

Comments