



EXPORT CONTROLS PROCEDURES

Title: Transfer of University Intellectual Property		
Procedure #: EC005	Effective Date: 10/18/2021	Author: Todd Wakeland
<p>Purpose/Definitions: The term “export controls” refers to a set of federal laws and regulations. These laws and regulations are used to:</p> <ul style="list-style-type: none"> • restrict both physical and nonphysical exports of items that could contribute to the military potential of international adversaries • to advance U.S. foreign policy goals, and • to protect the U.S. economy and promote trade goals. <p>The failure to comply with export control regulations is a violation of U.S. law and can result in criminal or civil prosecution, as well as denial of export privileges. The transfer of University intellectual property can create an export control risk.</p> <p>SIU’s central Office of Technology Management and Industry Relations works with SIU faculty, students, and staff to protect and commercialize intellectual property generated from all system campuses. In order to properly comply with U.S. export control laws and regulations, the SIU Export Control Office shall coordinate with the Office of Technology Management and Industry Relations to review agreements and request forms as detailed in the procedures below, as well as any other similar matters, that have a foreign component or technology that may be export-controlled. A foreign component is a matter in which there is involvement with a foreign entity or individual. Technology may be export-controlled if it is controlled by a U.S. export control law or regulation. The Export Controls office shall provide pre-approved export control language to the Office of Technology Management and Industry Relations that can be used in agreements, requiring each party to comply with all relevant United States laws governing the exports and re-exports of technical data or commodities. The Export Controls office shall review and approve all agreements that do not use the pre-approved export control language.</p>		

Procedure:

1. **Evaluation Request Forms:** An Evaluation Request Form (found on the Office of Technology Management and Industry Relations website at <https://siusystem.edu/tech-transfer/forms-agreements.shtml>) is required to disclose technology to the Office of Technology Management and Industry Relations and start the review process. Innovations covered by the SIU System Intellectual Property Policy must be disclosed by the developer in writing to the Office of Technology Management and Industry Relations through the completion of the Evaluation Request Form.

Upon receipt of a completed Evaluation Request Form, Office of Technology Management and Industry Relations staff will forward the Evaluation Request Form, along with any provided supporting documentation, to Export Controls staff for review and approval **prior** to the Office of Technology Management and Industry Relations completing its evaluation.

2. **Agreements:** The Office of Technology Management and Industry Relations handles a variety of agreements related to the transfer of intellectual property. It is imperative that export control language is included in agreements even when SIU does not plan on “exporting” materials. It is important that the university identifies any export-controlled items so that we can put the appropriate controls around them. This can also include “deemed exports” in which foreign national access to export-controlled items could be prohibited.

Pre-Approved Template Language

Listed below in sections a-e are the types of agreements handled by the Office of Technology Management and Industry Relations, along with the pre-approved export control language provided by the Export Controls office that is included in each agreement template. This language is preferred but can be edited by the involved parties in order to reach an executed agreement as long as both parties agree to abide by U.S. Export Control Laws.

Pre-Approved Export Control Language

If the template language is not used, the following language is pre-approved to be used in all cases:

Each party shall comply with all relevant United States laws governing the exports and re-exports of technical data or commodities made under this letter agreement, including, but not limited to, the U.S. Department of Commerce’s Export Administration Regulations and the regulations administered by the Office of Foreign Assets Control. Prior to providing SIU with any items subject to export control laws,

[NAME OF OTHER PARTY] will notify SIU and identify the items at issue and the applicable export control laws.

Pre-Approved Export Control Language – For Incoming Agreements

The following language is pre-approved for incoming agreements:

Each Party shall comply with all applicable United States laws governing the exports and re-exports of technical data, materials or commodities, including, but not limited to, the U.S. Department of Commerce’s Export Administration Regulations, The International Traffic in Arms Regulations (ITAR) as defined in the United States Munitions List (USML), and the regulations administered by the Office of Foreign Assets Control.

If the pre-approved language is used, Office of Technology Management and Industry Relations staff may proceed with finalizing the agreement without Export Control office approval but will send a copy of the agreement to Export Control staff. The Export Control staff will review the subject matter for export control applicability and follow up as necessary.

If the pre-approved language is not used, Office of Technology Management and Industry Relations staff will send the agreement to Export Control staff for review and approval, **prior** to finalizing the agreement. The Export Control staff will review the language in the agreement and respond back to Office of Technology Management and Industry Relations staff, providing feedback or approval to move forward with finalizing the agreement. The Export Control staff will also review the subject matter for export control applicability and follow up as necessary.

- a. Material Transfer Agreement:** This agreement defines the rights and responsibilities of providers and recipients with respect to materials and any derivatives transferred for research purposes. This agreement is used for material to be transferred in, out, or between SIU and another entity. Following is pre-approved export language to be used in these agreements. This language is preferred but can be edited by the involved parties in order to reach an executed agreement as long as both parties agree to abide by U.S. Export Control Laws.

Each party shall comply with all relevant United States laws governing the exports and re-exports of MATERIALS made under this Agreement, including, but not limited to, the U.S. Department of Commerce’s Export Administration Regulations and the regulations administered by the Office of Foreign Assets Control. Prior to providing SIU with any items subject to export control laws, ORGANIZATION will notify SIU and identify

the items at issue and the applicable export control laws. If the items are subject to the Export Administration Regulations (“EAR”), ORGANIZATION will either furnish to SIU the applicable Export Control Classification Numbers or indicate that EAR 99 applies. If the items are subject to the International Traffic in Arms Regulations (“ITAR”), ORGANIZATION will notify SIU of the relevant ITAR categories and subcategories. SIU may decline to accept any export-controlled items. ORGANIZATION hereby gives written assurance that it will comply with, and will cause its affiliates to comply with all United States export control laws and regulations, that it bears sole responsibility for any violation of such laws and regulations by itself or its affiliates, and that it will indemnify, defend and hold SIU harmless for the consequences of any such violation. ORGANIZATION will not disclose export controlled items or information unless and until a plan for the transfer, use, dissemination and control of the items or information has been approved by SIU’s Export Control Director.

- b. Confidential Disclosure Agreement:** This is SIU’s standard confidentiality agreement, which can be executed to define the proper handling of confidential information by both SIU and industry partners. Following is pre-approved export language to be used in these agreements. This language is preferred but can be edited by the involved parties in order to reach an executed agreement as long as both parties agree to abide by U.S. Export Control Laws.

Each Party shall comply with all relevant United States laws governing the exports and re-exports of technical data or commodities made under this Agreement, including, but not limited to, the U.S. Department of Commerce’s Export Administration Regulations and the regulations administered by the Office of Foreign Assets Control. Prior to providing SIU with any items subject to export control laws, ORGANIZATION will notify SIU and identify the items at issue and the applicable export control laws. If the items are subject to the Export Administration Regulations (“EAR”), ORGANIZATION will either furnish to SIU the applicable Export Control Classification Numbers or indicate that EAR 99 applies. If the items are subject to the International Traffic in Arms Regulations (“ITAR”), ORGANIZATION will notify SIU of the relevant ITAR categories and subcategories. SIU may decline to accept any export-controlled items. ORGANIZATION hereby

gives written assurance that it will comply with, and will cause its affiliates to comply with all United States export control laws and regulations, that it bears sole responsibility for any violation of such laws and regulations by itself or its affiliates, and that it will indemnify, defend and hold SIU harmless for the consequences of any such violation. ORGANIZATION will not disclose export controlled items or information unless and until a plan for the transfer, use, dissemination and control of the items or information has been approved by SIU's Export Control Director.

- c. Exclusive License Agreement:** A licensing agreement is a legal contract in which the licensor (SIU) grants the licensee (company) rights to make, sell, use, and/or otherwise commercialize intellectual property owned by the licensor (SIU). This is the agreement used for general technologies. Following is pre-approved export language to be used in these agreements. This language is preferred but can be edited by the involved parties in order to reach an executed agreement as long as both parties agree to abide by U.S. Export Control Laws.

COMPANY agrees to strictly comply, and shall require its Affiliates and sublicensees to strictly comply, with any and all applicable United States export control and trade laws and regulations, including but not limited to the U.S. Department of Commerce's Export Administration Regulations and the regulations administered by the Office of Foreign Assets Control. COMPANY hereby gives written assurance that it will comply with, and will cause its sublicensees/Affiliates to comply with all United States export control laws and regulations, that it bears sole responsibility for any violation of such laws and regulations by itself or its sublicensees/Affiliates, and that it will indemnify, defend and hold UNIVERSITY harmless for the consequences of any such violation. COMPANY will not disclose export controlled items or information unless and until a plan for the transfer, use, dissemination and control of the items or information has been approved by UNIVERSITY'S Export Control Director.

- d. Exclusive Software and Intellectual Property License Agreement With Equity:** A licensing agreement is a legal contract in which the licensor (SIU) grants the licensee (company) rights to make, sell, use, and/or otherwise commercialize intellectual property owned by the licensor (SIU). This is the agreement used for software. Following is pre-approved export language to be used in these agreements. This language is preferred but can be edited by the involved parties

in order to reach an executed agreement as long as both parties agree to abide by U.S. Export Control Laws.

Licensee agrees to strictly comply, and shall require its Affiliates and Sublicensees to strictly comply, with any and all applicable United States export control and trade laws and regulations, including but not limited to the U.S. Department of Commerce's Export Administration Regulations and the regulations administered by the Office of Foreign Assets Control. Licensee hereby gives written assurance that it will comply with, and will cause its Sublicensees/Affiliates to comply with all United States export control laws and regulations, that it bears sole responsibility for any violation of such laws and regulations by itself or its Sublicensees/Affiliates, and that it will indemnify, defend and hold University harmless for the consequences of any such violation. Licensee will not disclose export controlled items or information unless and until a plan for the transfer, use, dissemination and control of the items or information has been approved by University's Export Control Director.

- e. Option Agreement:** SIU's standard option agreement is a legal contract through which SIU can grant a prospective licensee (company) a right to obtain a license for a finite amount of time for intellectual property owned by SIU. The agreement is commonly used for situations when a company is exploring a technology's fit within its portfolio or other due diligence matters. Following is pre-approved export language to be used in these agreements. This language is preferred but can be edited by the involved parties in order to reach an executed agreement as long as both parties agree to abide by U.S. Export Control Laws.

COMPANY agrees to strictly comply, and shall require its Affiliates and sublicensees to strictly comply, with any and all applicable United States export control and trade laws and regulations, including but not limited to the U.S. Department of Commerce's Export Administration Regulations and the regulations administered by the Office of Foreign Assets Control. COMPANY hereby gives written assurance that it will comply with, and will cause its sublicensees/Affiliates to comply with all United States export control laws and regulations, that it bears sole responsibility for any violation of such laws and regulations by itself or its sublicensees/Affiliates, and that it will indemnify, defend and hold UNIVERSITY harmless for the consequences of any such violation. COMPANY will not disclose

export controlled items or information unless and until a plan for the transfer, use, dissemination and control of the items or information has been approved by UNIVERSITY'S Export Control Director.

Export controls 10-18-21