

DUKE UNIVERSITY

**PROCEDURES FOR COMPLIANCE WITH
EXPORT CONTROL REGULATIONS**

Project Technology Control Plan

Principal Investigator:

Sponsor:

Project:

UNIVERSITY POLICY and export control regulations

Contract limitations on access to restricted materials or confidential information, whether proprietary or export controlled, are acceptable only to the extent allowed by Duke University policies. (These policies can be found in the University-Industry Guidelines and the Policy on Classified and Restricted Research - see excerpts in Attachment A.)

Generally, Duke will accept confidential information only if we are assured that accepting it does not affect our right to publish the *results* of the research being performed.

By ensuring that these policies are upheld in the University's research contracts, we also ensure that the sponsored research done at the University will remain in the safe harbor afforded "fundamental research" by the Export Administration Regulations (EAR) and International Traffic in Arms Regulations (ITAR). We thus reduce the risk of possible export control violations on the part of the University and its employees.

Principal Investigator's Certification

Certification regarding research using data or technology subject to export controls

Principal Investigator: _____
Department: _____
Phone Number: _____
Sponsor: _____
Contract Number: _____
Project Title: _____

As the Principal Investigator for the above referenced project:

1. I fully intend to share broadly the results of this research within the scientific community;
2. I certify that the dissemination of these research results will not be dependent on the inclusion of the confidential, proprietary, or export controlled data or technology I will receive from the sponsor of this research;
3. I certify that foreign nationals can successfully participate in the work without having access to the export controlled data or technology;
4. I certify that any graduate students participating on the project will not be subject to any restrictions on their dissertation or thesis due to the export controlled data or technology;
5. I certify that the attached Project Technology Control Plan developed for this research will be followed and enforced.

Signature: _____ Date: _____

As participants on this project with access to the confidential, proprietary, or export controlled data or technology provided by the sponsor, we certify that we have read the attached Project Technology Control Plan and understand the procedures required for protection of the data or technology.

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Signature: _____ Date: _____

Project Technology Control Plan

1. INTRODUCTION

- 1.1 DUKE UNIVERSITY (hereinafter referred to as DUKE) is a non-profit educational institution located in Durham, North Carolina,
- 1.2 DUKE and _____ (hereinafter referred to as SPONSOR) have signed a sponsored research agreement or contract to support a project entitled “ _____ ” (hereinafter referred to as the PROJECT).
- 1.3 This agreement or contract includes a clause regarding confidential or proprietary information to be provided by the SPONSOR to DUKE. It has been determined that this information will be subject to export controls under the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR).
- 1.4 Therefore, the following Project Technology Control Plan (PTCP) has been developed and implemented to protect any export controlled data or technology received by DUKE.
- 1.5 The PTCP will be under the supervision of _____ (hereinafter referred to as PROJECT SUPERVISOR), who is the principal investigator for the PROJECT.

2. GENERAL

- 2.1 DUKE understands that disclosure of unclassified ITAR-controlled technical data to foreign persons in the course of employment is considered to be an export under the International Traffic in Arms Regulations (22 C.F.R. §§ 120-130) and is subject to license or other approval by the U.S. Department of State, Directorate of Defense Trade Controls (hereinafter referred to as DTC).
- 2.2 DUKE understands that disclosure of unclassified EAR-controlled technology and software to foreign persons in the course of employment is considered to be an export under the Export Administration Regulations (15 C.F.R. §§ 730-799) and is subject to license by the U.S. Department of Commerce, Bureau of Industry and Security (hereinafter referred to as BIS) or the applicability of a valid License Exception.
- 2.3 DUKE will comply with all applicable ITAR and EAR regulations, including those regarding the export of technology, technical data, software, services, commodities, and all other items as they apply to the PROJECT.

3. SCOPE

- 3.1 In the course of work on the PROJECT, various DUKE employees may participate in the PROJECT, including but not limited to faculty, research scientists, undergraduate students, graduate students, post-doctoral fellows, and technicians with certain engineering and educational experience some of whom are foreign persons recognized as experts in particular specialized fields or students in particular specialized fields of study.
- 3.2 This PTCP delineates the policies and controls implemented to assure no transfer of technology, technical data, or software takes place beyond what is approved under valid authorization by DTC or BIS, or excepted from licensing under applicable regulations.
- 3.3 A “foreign person” as described in this text, for purposes of export controls including restrictions on the furnishing of unclassified controlled technical data or technology, is “any natural person who is not a lawful permanent resident as defined by 8 U.S.C. 1101(a)(20) or who is not a protected individual as defined by 8 U.S.C. 1324b(a)(3). It also means any foreign corporation, business association, partnership, trust, society or any other entity or group that is not incorporated or organized to do business in the United States, as well as international organizations, foreign governments and any agency or subdivision of foreign governments (e.g. diplomatic missions).” 22 C.F.R. § 120.16; *see also* 15 C.F.R. § 734(b)(2), § 772.
- 3.4 Under the definition of a “foreign person” set forth in Section 3.3 above, if a person is not a U.S. citizen or permanent resident alien, even a valid authorization to work in the United States (such as a valid work visa) does not authorize that person to have access to ITAR- or EAR-controlled technical data, technology, or software in the absence of a license or other proper export authorization.
- 3.5 ITAR exports. Under the ITAR, an export includes disclosing (including oral or visual disclosure) or transferring technical data to a foreign person, whether in the United States or abroad; or performing a defense service on behalf of, or for the benefit of, a foreign person, whether in the United States or abroad. 22 C.F.R. § 120.17.
- 3.6 EAR exports. Under the EAR, an export includes any release of technology or source code subject to the EAR to a foreign person. Such release is deemed to be an export to the home country or countries of the foreign person regardless of where the release occurs. 15 C.F.R. § 734(b)(2). Each of the following constitute a release under the EAR: (a) visual inspection by a foreign national of U.S. origin equipment and facilities; (b) oral exchanges of information in the United States or abroad; and (c) the application to situations abroad of personal knowledge or technical experience acquired in the United States. 15 C.F.R. § 734(b)(2).

4. FOREIGN PERSON POLICY

- 4.1 No unauthorized exports of technical data, technology, or software related to the PROJECT will be made by DUKE, or by its employees or by any person acting on behalf of DUKE, to any foreign person.
- 4.2 Foreign persons will not be employed or asked to participate on the PROJECT in a capacity that involves the disclosure of technical data as defined in the ITAR until license authority has been granted by DTC, or the DUKE Office of Research Support has determined that a valid ITAR licensing exemption applies; foreign persons will not be employed or asked to participate on the PROJECT in a capacity that involves the disclosure of technology or source code controlled under the EAR until license authority has been granted by the BIS, or DUKE Office of Research Support has determined that a valid License Exception or other exemption applies.
- 4.3 Controls and procedures implemented pursuant to this PTCP shall include measures to prevent unauthorized access by foreign persons to both physical, hard copy technical data and technical data in electronic form. When foreign persons are given access to technical data pursuant to a license or other authority, appropriate safeguards shall be enforced to ensure compliance with the terms and conditions of the license or other authority under which disclosure is made.

5. ACCESS TO TECHNICAL DATA

5.1 DUKE POLICY

Limitations on access to restricted materials or confidential information, whether proprietary information or export controlled information, can be allowed only to the extent allowed by DUKE policies. Any limitation on access to confidential information cannot impose limitations on the right of DUKE faculty, students, and others associated with the PROJECT to publish the results of their work.

5.2 SUPERVISION OF UNCLASSIFIED TECHNICAL DATA

Unclassified PROJECT technology and technical data subject to export control may be accessed by a foreign person associated with the PROJECT provided an Export License, other valid authorization, or license exception permits such access.

The unclassified but export controlled PROJECT technology or technical data to be accessed will be controlled by the PROJECT SUPERVISOR to whom the foreign person reports.

5.3 COMPLIANCE TRAINING FOR PROJECT EMPLOYEES & FOREIGN PERSONS

All employees participating on this PROJECT will be made cognizant of and responsible for adherence to the PROJECT security rules and procedures stipulated in this PTCP by undergoing export control compliance training conducted by the Office of Research Support.

Foreign persons participating on the PROJECT will be informed that an export license or other valid U.S. Government authorization will be required before they can have access to any PROJECT technology or technical data that is subject to export controls.

5.4 NON-DISCLOSURE STATEMENT

All participants on the PROJECT, whether foreign persons authorized by DTC, BIS, or pursuant to a valid exemption, U.S. citizens or legal resident aliens, to whom export controlled PROJECT technology or technical data will be disclosed, will receive compliance training instructing them of their responsibilities regarding disclosure of technology or technical data, and will be required to sign Attachment C: Principal Investigator's certification. If appropriate, a signed and dated copy of the statement will be forwarded to the relevant licensing agency, with reference to the authorizing license exception, license number, or other specific authority.

6. OTHER CONTROLS [This is where we include hard copy security and closeout procedures such as destruction or return of the data or technology to the sponsor]

6.1 When working on this PROJECT, no employee or other person acting on behalf of DUKE shall, without prior approval from his or her PROJECT SUPERVISOR, ship, mail, carry, or transmit PROJECT technical data (including transmission by facsimile, e-mail, or other means) from the United States or within the United States with the knowledge or intent that the data will be shipped or transmitted from the United States to a foreign person or foreign destination.

6.2 Any export controlled PROJECT technical data that is lawfully shipped, mailed, or otherwise transmitted to a foreign person or destination shall include, in a prominent location, the following statement:

The data being transmitted herewith may be controlled for export by the United States Government, and any re-transmission of this data to any other foreign person or destination, including re-importing this data into the United States, may be illegal. This data may not be re-transmitted in any form without first establishing that the re-transmission is authorized by the relevant U.S. Government

agency, license, or other authorization pursuant to applicable law.

- 6.3 No DUKE employee shall export any PROJECT technology, software, or technical information to a foreign person, unless authorized by the PROJECT SUPERVISOR. This applies to the release of export controlled technical data of U.S. origin in a foreign country or to a foreign entity or to any foreign person who visits DUKE .
 - 6.4 Foreign persons who are on extended visits to DUKE and are participating in the PROJECT are briefed in those areas of export control and export licensing, as set forth in the guidelines provided by DTC, BIS, and other U.S. agencies, which are pertinent to their activities on the PROJECT.
 - 6.5 No export controlled technical data, technology, or software of the PROJECT will be disclosed to any foreign visitor in violation of applicable controls.
 - 6.6 No DUKE employee shall disclose technical data subject to export controls at conferences, meetings, seminars, or similar gatherings located in or outside the United States.
 - 6.7 No foreign person employee may re-export any export controlled technical data, or software of the PROJECT to any other foreign person or country unless that export is authorized by the relevant U.S. government agency or regulations.
 - 6.8 Before any Duke faculty, research scientist, undergraduate student, graduate student, post-doctoral fellow, or technician publishes a paper, or otherwise publicly releases technical data, the DUKE PROJECT SUPERVISOR will review the material to be released to determine whether the release contains any export controlled information.
 - 6.9 The PROJECT SUPERVISOR will not allow placement of any the export controlled technical data of the PROJECT on the DUKE web site or any other web site
7. ELECTRONIC DATA CONTROLS
- 7.1 Electronic PROJECT data subject to export controls will be stored only on designated, stand-alone, PROJECT computers and appropriately password protected. Password security will be reviewed by the Office of Information Technology Security Officer and rigorously maintained by the PROJECT SUPERVISOR.
 - 7.2 Foreign persons and visitors who hold other than U.S. citizenship or status as lawful permanent residents will not be given access to the PROJECT's designated computers, except pursuant to authorization by DTC or other

relevant U.S. government agency, or under valid exemption under applicable regulations.

- 7.3 All information placed on the DUKE web site in unprotected files shall be considered to have been placed into the public domain, subject to the controls described in Section 6.6 above. Any technical information that may be covered by the ITAR, EAR, or other pertinent regulations shall not be included on a DUKE web site or any other web site.

8. TRANSFERS IN ENGLISH LANGUAGE

PROJECT technology and technical data, and materials pertaining to such technology and technical data, may only be transferred from DUKE in the English language, except where specifically authorized by the DUKE PROJECT SUPERVISOR.

12. SANCTIONS & EMBARGOES

DUKE understands that the United States maintains certain economic sanctions and embargoes against various foreign countries and various entities and individuals. No exports or other transactions will be made in violation of those sanctions and embargoes.

13. SUMMARY

- 13.1 The policy of DUKE is to exercise sufficient supervision of all employees or students involved in the PROJECT to ensure compliance with applicable regulations regarding the transfer or release of export controlled technology, technical data, and software.
- 13.2 All PROJECT SUPERVISORS are responsible for ensuring those employees or students participating in their PROJECTS are properly instructed in the handling of export controlled data. Such data shall only be disclosed in compliance with applicable regulations and only to persons authorized to receive it.
- 13.3 The PROJECT SUPERVISOR named in section 1.5 shall be the point of contact for this PROJECT Technology Control Plan.

Attachment A

Excerpts from University Policies

University-Industry Guidelines:

Tradition has long held that university researchers must be free to publish their research results. This freedom is essential if the university is to be the source of new knowledge for society. Therefore it must be vigorously guarded. At the same time, good business practice requires that sponsors protect their proprietary rights, trade secrets, or other confidential information. These separate and legitimate interests may diverge on questions relating to publication. Clearly, it is in both the researcher's and the sponsor's best interests to find ways to protect academic freedom while at the same time meeting the nondisclosure requirements of the sponsor.

Policy: Final determination of what may be published or not published shall remain with the university. The university will also retain the right to make a final determination with respect to publication of computer programs. Exceptions may be granted by the Provost only after detailed review and upon the advice of the Research Policy Committee.

Policy: Agreements to treat as confidential information generated by research done at the university are ordinarily unacceptable. There may, however, be situations where exceptions to these guidelines are consistent with the university's education, professional, scholarly principles. Such exceptions are granted by the Provost only after detailed review and upon the advice of the Research Policy Committee.

Policy: It is also the responsibility of each individual researcher to protect freedom to communicate with colleagues and to refuse to enter into a sponsored agreement that will restrict that freedom in unreasonable or unacceptable ways.

Policy: In general, students shall not participate in projects which, because of confidentiality or other factors, might constrain their right to publish or communicate freely. Exceptions to this policy must be approved in writing by the student's chairman (or chairmen, if the faculty member is in a second department) or dean (or deans if the faculty member is in a second school). The student shall also sign this document to signify understanding of the issues involved. Copies of the signed document must be sent to both faculty member and student before the student may become involved in the project.

Policy on Classified and Restricted Research:

The University does not conduct research for federal or industrial sponsors which is classified, requires security clearance for the investigators or a University facility, or is

subject to other restrictions which are not compatible with University policies. This policy is intended to preserve the academic integrity of research, and therefore no research shall be carried out under the auspices of the University which in any way restricts or unduly delays the publication of the results of the research or in any way restricts the selection of employees of the University who can work on the research. Duke University does not have any level of institutional security clearance, nor can it arrange security clearance on behalf of its faculty.

The University will ensure that the results of research will always be permitted to be published in a scholarly manner without unduly long delays, and researchers shall always have the right to engage in scholarly discussion with their colleagues without restriction. The unfettered right to publish and communicate with colleagues is set forth in the University-Industry Guidelines in sections entitled "Review Prior to Publication and Resulting Delay," "Preventing Publication," and "Communication among Research Colleagues."

No member of the faculty, no employee, no student, no fellow, nor any agent of Duke University, shall receive, directly or indirectly, any form of compensation from, or use any of the resources and facilities of, Duke University for research which violates this policy.

This policy shall not preclude faculty members from arranging, on an individual basis, to participate as consultants in projects involving classified or restricted research through other institutions. The prohibition against the use of University resources and facilities shall not preclude their occasional or incidental use in the conduct of faculty members' independent projects.