OFFICE OF TECHNOLOGY DEVELOPMENT
Policy and Procedures Date: August 21, 2015

Required Procedures for Disclosed Technologies

1. Purpose
To establish procedures for evaluating potential export control issues with technologies disclosed to the Office of Technology Development (OTD) for potential protection of intellectual property (IP).

2. Policy
OTD shall comply with all University procedures, policies and applicable export control regulations governing the disclosure and protection of University IP.

3. Procedures
University employees disclose potential IP through completion of an online form called a “Disclosure Form”. See http://otd.ou.edu/pdfs/disclosure_form_20130117.pdf. The OEC has provided ‘trigger questions’ to OTD for this form.

1. OTD shall provide a copy of the completed Disclosure Form to the OEC. OTD shall flag and hold the disclosure process if an inventor has indicated on the disclosure form that the invention may have export control issues. The OEC will communicate to OTD when the flag has been resolved.

2. The OEC will review the description of the disclosed technology to determine if there is an Export Control Classification Number (ECCN) or United States Munitions List (USML) Category that applies.

3. If an applicable control is found, this shall be communicated to the OTD by the OEC. The OEC shall work with OTD to determine if the technology is ‘publicly available’ or otherwise exempt from export control regulation. The OEC and OTD shall follow OU policies regarding IP when making this determination.

4. OTD is responsible for preventing unauthorized foreign national access to export-controlled technical data in its possession. The OEC is responsible for recording export-controlled technical data in the Visual Compliance library.

5. OTD shall keep records of disclosed technologies in a protected location.
Required Training Procedures for Licensing Agreements

1. Purpose
To establish procedures to be followed by the Office of Technology Development (OTD) in connection with pursuing execution of Licensing Agreements and to ensure that transfers of non-publicly available information and technology and physical exports comply with any applicable provisions of the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), Foreign Assets Control Regulations (FACR), and any other applicable export and sanctions regulations.

2. Policy
OTD shall comply with all University procedures, policies and applicable export control regulations governing the transfer of items, materials and/or non-publicly available information or technology via Licensing Agreements.

3. Procedures
1. When OU is pursuing a Licensing Agreement for University intellectual property OTD shall send the agreement to the OEC for review.
2. The OEC shall perform a restricted party screening on the non-OU party. The OEC will maintain the records of this screening. The OEC shall advise against pursuing any Licensing Agreements with a restricted party.
3. The OEC shall refer to the disclosure files and/or the Visual Compliance library to determine if the technology being licensed has been reviewed and, if so, if any applicable Export Control Classification Number (ECCN) or United States Munitions List (USML) Category has been identified.
   a. If the licensee is receiving information or technology that is not publicly available, and an ECCN or USML Category is applicable, the OEC shall evaluate the licensee for potential U.S. government-imposed license requirements. The OEC will draft appropriate language for any Licensing Agreement that involves export-controlled technical data.
   b. Agreements that do not involve export-controlled technical data should incorporate the following export control clause:

      Parties agree to comply with all applicable U.S. export control laws and regulations, including the International Traffic in Arms Regulations (ITAR), 22 CFR 120-130, the Export Administration Regulations (EAR), 15 CFR 730-799, and the Foreign Assets Control Regulations (FACR), 31 CFR 500-599, in the performance of this agreement. Neither party will export or reexport controlled items or technologies without first obtaining any necessary export licenses or other government approval such as qualifying for exemptions or license exceptions.

   Any modification or request for clarification related to this clause shall be referred to the OEC for consideration/negotiation.
4. The OEC will communicate the results of the review to OTD. OTD shall not execute Licensing Agreements that involve OU confidential information or physical exports unless they have been reviewed and approved by the OEC. Export transactions not screened by the OEC will result in personal criminal/civil liability.
Required Procedures for Material Transfer Agreements

1. Purpose
To establish procedures to be followed by the Office of Technology Development (OTD) in connection with pursuing execution of Material Transfer Agreements (MTAs) and to ensure that transfers of non-publicly available information and technology and physical exports comply with any applicable provisions of the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), Foreign Assets Control Regulations (FACR), and any other applicable export and sanctions regulations.

2. Policy
OTD shall comply with all University procedures, policies and applicable export control regulations governing the transfer of items, materials and/or non-publicly available information or technology via MTAs.

3. Procedures
OTD reviews MTAs associated with the Norman campus and those associated with the Health Sciences Center that involve a commercial entity or Intellectual Property issues.
   1. OTD shall send MTAs to the OEC so that a restricted party screening can be performed on the non-OU party. The OEC will maintain the records of this screening. The OEC shall advise against pursuing any MTA with a restricted party.
   2. The OEC will review the MTA for language regarding confidentiality or physical exports. The OEC will review any technology that is subject to export controls or materials being exported to determine if there is an applicable Export Control Classification Number (ECCN) or United States Munitions List (USML) Category that applies. If an applicable control is found, the OEC will determine if the export will require a license or license exception from the U.S. government.
   3. The OEC will review the purpose of the MTA to verify that OU material will not be used for a restricted end use such as military end use or weapons proliferation.
   4. The OEC will communicate the results of the review to OTD. OTD shall not execute MTAs that involve OU confidential information or physical exports unless they have been reviewed and approved by the OEC. Export transactions not screened by the OEC will result in personal criminal/civil liability.
Required Procedures for Non-Disclosure Agreements

1. Purpose
To establish procedures to be followed by the Office of Technology Development (OTD) in connection with pursuing execution of Non-Disclosure Agreements (NDAs), and to ensure that transfers of non-publicly available information and technology comply with any applicable provisions of the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), Foreign Assets Control Regulations (FACR), and any other applicable export and sanctions regulations.

2. Policy
OTD shall comply with all University procedures, policies and applicable export control regulations governing transfers of non-publicly available information and technology via a Non-Disclosure Agreement.

3. Procedure
1. Parties requesting a NDA shall complete an online OTD Form (http://impact.ou.edu/request/). This form shall, at a minimum, collect the following information:
   - Company/institution name, point of contact and full street address;
   - Purpose of agreement (i.e., teaming relationship, specific project, etc.);
   - Name of responsible University party (i.e., person from the University, including the person’s department, who is requesting the NDA origination or review);
   - Names of University employees or individuals who will receive or transmit information pursuant to the Agreement; and
   - Specific description of technology/information to be shared OR that the technology/information is unknown.
   If the form did not collect the necessary information OTD shall follow up with the responsible OU party to obtain the missing information and will share this information with the OEC.

2. The OEC automatically receives the OTD form via email when completed.

3. The OEC will perform a Restricted Party Screening on the non-OU party and will communicate the results to OTD. The OEC will maintain the records of this screening. The OEC shall advise against pursuing any NDA with a restricted party.

4. OTD, acting in consultation with the OEC, has developed a standard NDA and Addendum. In the event that a party needs to share export-controlled technical data with OU, the Addendum should include the specific information needed for the OEC to implement compliance measures, including Export Control Classification Numbers (ECCNs) and United States Munitions Lists (USML) categories.

5. When the OEC receives an NDA from OTD, the OEC will note the type of agreement (unilateral or bilateral) and shall generally advise OTD as follows:
   a. For unilateral agreements (no confidential OU information):
      i. Use standard export control clause.
      ii. This language is appropriate since OU technical data isn’t involved, and the company’s confidential information does not pose significant export control risks if it’s not found on a control list.
      iii. This approach is not appropriate if OU confidential information is involved.

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1 The parties do not anticipate the need to disclose to each other technical data that are subject to control under the Commerce Control List of the Export Administration Regulations, 15 CFR 730-774, or the U.S. Munitions List of the International Traffic in Arms Regulations, 22 CFR 120-130, (collectively, “export controls”). In the event a party believes it is necessary to disclose technical data that are regulated under export controls, the Disclosing Party will clearly mark or otherwise identify such data as “Export Controlled” and provide sufficient notice and information to allow Receiving Party to comply with any applicable export controls. The parties shall not export, disclose, or transfer any such data directly or indirectly to foreign persons wherever located without complying with these and any other applicable laws and regulations.
v. This option is the best approach from an export control perspective because it poses the least amount of institutional risk.

b. For bilateral agreements with OU confidential information that is business information only (not technical info):
   i. Use standard export control clause.
   ii. This language is appropriate since OU technical data isn’t involved, and the company’s confidential information doesn’t pose significant export control risks if it’s not found on a control list.
   iii. This approach is not appropriate if no OU confidential information is involved (if this is the case, opt for (a) above).
   iv. This approach is not appropriate if OU technical info is involved (if this is the case, opt for (c) or (d) below).
   v. Risk: moderate/low.
   vi. If option (a) is not feasible then this is the next best solution.

b. For bilateral agreements with OU confidential technical information that is not found on the Commerce Control List (CCL) or the United States Munitions List (USML):
   i. Use standard export control clause.
   ii. This approach is not appropriate if no OU confidential information is involved (if this is the case opt for (a) above) or if only confidential business info is involved (if this is the case opt for (b) above).
   iii. OU technical information that is not excluded from the scope of export control regulation (publically available, fundamental research, educational information) shall be evaluated by the OEC. In some cases it may be debatable whether or not OU technical information is subject to export control regulation, however, restricting the dissemination of technology will mean the technology must be treated as potentially subject to regulation.
   iv. If the OEC screens the technology and no CCL or USML matches are found, the standard EC clause is still appropriate.
   v. If the OEC screens the technology and does find a match on either the CCL or USML, the standard export control clause is not appropriate unless we can prove the information is excluded from the scope of export control regulation. This can challenging if OU is protecting it under an NDA. The OEC may instead opt for (d) below.
   vi. Risk: Moderate (higher risk due to OU’s technical information being protected as “confidential”, however, if it’s not found on a control list, the regulatory risk is low).
   vii. This approach is an acceptable solution, but poses higher risk than (a) and (b) and will require more resources/time.

c. For bilateral agreements with OU confidential technical information found on a control list:
   i. Standard EC clause cannot be used
   ii. OEC will provide language that is appropriate for the technology and parties involved.
      This language must be tailored to the specifics involved.
   iii. Crafting the agreement in an appropriate manner is the only way to mitigate the risk.
      This will take time and measurable resources from the OEC, but that shouldn’t prevent pursuing these agreements if they are necessary.
   iv. Risk: Moderate to high.
   v. This option is the least attractive, but may still be the only appropriate approach in some circumstances.

6. OTD shall not execute NDA’s that involve OU confidential information unless the Agreement has been reviewed and approved by the OEC. Export transactions not screened by the OEC will result in personal criminal/civil liability.

Once the above information has been provided by the responsible University Party, the OEC will begin the legal review process of the NDA. The OEC will make every effort to complete the review of the NDA within two (2) weeks of receiving the Agreement and the information required by this procedure. In the event that export-controlled technical data is involved, an extended review period will likely be necessary.

4. Expedited Review Procedure
It is recognized that some Agreements may be more time sensitive than others. If expedited review is necessary, that the request must be sent from the Vice President with oversight for the Agreement (i.e., if CCE is requesting the Agreement, the request for expedited review must come from Dr. Pappas).