



Sample Agreement (Article) Language to address export controls in various types of NDSU Agreements

The following language is intended to provide NDSU with sample or model language that it may adapt to the following types of agreements for export control purposes. Please note that this is merely sample language for guidance purposes: we recommend that NDSU Counsel carefully review this suggested language and conform it accordingly to how NDSU would normally prepare its contractual provisions.

- **Fabrication/Service Contracts (where NDSU is performing a fee-for-service contract that falls outside of fundamental research)**
- **Lease Agreements (where NDSU is a landlord to an external party)**
- **Non-Disclosure Agreements (incoming NDAs/data being provided to NDSU)**
- **Master Service Agreements (where NDSU is procuring a service on behalf of the University)**

Fabrication/Service Contracts

Article X: Export Controls

Where North Dakota State University is providing a fee-based service or is fabricating any item for [name Agreement party], a prior determination by the parties will be made as to whether the agreed-upon work is export controlled. Export controls may attach a) to the technology or process that is being used to perform the service; b) the end product or commodity (where applicable); c) proprietary technology or software that NDSU received from [name Agreement party or any other external party] that is necessary for the agreed-upon work; or d) materials used in the production or fabrication process. This determination shall occur and be mutually confirmed by the parties at least [X days] prior to the commencement of such work so that export control compliance can timely addressed.

As to any export controlled item which [name Agreement party] intends to provide the NDSU under this Agreement, [name Agreement party] shall provide NDSU with at least 30 days notification of its intent to provide such item(s) so that any necessary compliance measures can be undertaken on a timely basis.

Article X: General Export Control Compliance

[Note: many institutions include something like the following as part of an overall compliance definition/liability framework]

It is North Dakota State University's policy to remain fully compliant at all times with all U.S. export control regulations, including but not limited to the Export Administration Regulations; International Traffic in Arms Regulations; and embargo sanctions under the Office of Foreign Assets Control (OFAC). Therefore, to the extent that [named Agreement party or any other party to this contract] does not comply with said regulations, North Dakota State University will not be held responsible or liable for such non-compliance.



Non-Disclosure Agreements

[Note: this language is intended to address incoming data or information that NDSU would need to address from an export control agreement.]

Article X: Export Controls

It is North Dakota State University's policy to remain fully compliance at all times with all U.S. export control regulations, including but not limited to the Export Administration Regulations; International Traffic in Arms Regulations; and embargo sanctions under the Office of Foreign Assets Control (OFAC). Therefore, in the event that [name NDA party/sponsor] wishes to provide export controlled data or information to NDSU during the course of activity under this Agreement, [name party] must first notify NDSU of its intention to provide this data at least 30 days in advance of actually providing this data or information, and indicate who at NDSU will be the intended recipient. NDSU will then determine whether it can or cannot accept such data, the conditions for such receipt if agreed upon, and communicate said determination back to [name party/sponsor].

Lease Agreements

Article X: Export Controls

[Note: it is important to distinguish those situations where (a) the lease agreement is purely a landlord (NDSU)/tenant (unrelated) party situation vs. (b) situations where an NDSU employee is participating in the work that the tenant is doing (on behalf of NDSU), or the tenant's work contemplates the use of NDSU resources beyond the lease agreement itself.] It is critical that any potential conflict of interest with regard to collaboration with a tenant, i.e. work being conducted on behalf of NDSU vs. private consulting etc., be vetted in advance, as this could affect the lease agreement as well.

Type (a)

It is North Dakota State University's policy to remain fully compliant at all times with all U.S. export control regulations, including but not limited to the Export Administration Regulations; International Traffic in Arms Regulations; and embargo sanctions under the Office of Foreign Assets Control (OFAC). Therefore, to the extent that [named Lease Agreement party any other party to this lease Agreement] does not comply with said regulations during the term of this lease Agreement, North Dakota State University will not be held responsible or liable for such non-compliance.

Type (b)

It is North Dakota State University's policy to remain fully compliance at all times with all U.S. export control regulations, including but not limited to the Export Administration Regulations; International Traffic in Arms Regulations; and embargo sanctions under the Office of Foreign Assets Control (OFAC). Therefore to the extent that NDSU personnel are collaborating or participating in any work being conducted in said leased premises, each party will remain strictly responsible for its own compliance with all U.S. export control regulations. In the event that [



named Lease Agreement party or any other party to this lease Agreement] does not comply with said regulations during the term of this lease Agreement, North Dakota State University will not be held responsible or liable for such non-compliance.

Master Service Agreements/Contracts

[Note: NDSU should contractually cover itself from an export compliance standpoint in those situations where it is hiring an external party to perform a particular service, for example, IT services or other infrastructure services. Presumably, also, all key vendors that fall into this category will have been screened against Visual Compliance prior to contract, to ensure that there is no export control exposure from that perspective.]

It is North Dakota State University's policy to remain fully compliant at all times with all U.S. export control regulations, including but not limited to the Export Administration Regulations; International Traffic in Arms Regulations; and embargo sanctions under the Office of Foreign Assets Control (OFAC). Therefore, in the event that any party to this [Master Services Agreement/Contract] does not comply with said regulations during the term of this Agreement/contract, North Dakota State University will not be held responsible or liable for such non-compliance.

MISCELLANEOUS

The Parties acknowledge that the use and dissemination of the Technology and related information is restricted by United States Law, including 22 CFR 121.1 Category XI(a)(3)(xvi). The Parties are both subject to United States laws and regulations controlling the export of technical data, computer software, prototypes, and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act of 1979), and agree that their respective obligations hereunder are contingent on compliance with the applicable United States export laws and regulations. Each Party shall be responsible for its own use of Technology and the prototype, including any demonstration, and ensuring its compliance with all applicable laws. Company hereby warrants that neither it, nor any of its employees, are debarred or restricted in any manner from receipt and/or use of Technology and the prototype and that it accepts full responsibility for its compliance with all applicable laws and regulations. While the transfer of Technology, certain technical data and commodities may require a license from the cognizant agency of the United States Government, NDSU neither represents that a license is required nor that, if required, it shall be issued. This provision shall survive the expiration or any early termination of this Agreement.