Carleton College Deemed Export Form

Name of Foreign National (FN) employee: _____

Position/proposed activities of FN: _____

Department: _____

FN's Country of Citizenship: _____

*This is to be completed by the supervisor or project manager of the position or project that will **involve a foreign national** (i.e., non-U.S. citizen or non-U.S. permanent resident).*

Will the Carleton foreign national employee, student, contractor, visiting fellow and/or guest, as part of the scope of his/her expected engagement with the College, be expected or required to engage in activities:

a. Funded by the US Dept. of Defense (including any armed services branches)
☐No   ☐Yes

b. Funded by the US Defense Advanced Research Projects Agency (DARPA)
☐No   ☐Yes

c. Involving military/defense-related research, technical services, or training
☐No   ☐Yes

d. Involving access to private-sector information (including intellectual property, technical data and/or technology) considered proprietary or confidential in nature
☐No   ☐Yes

e. Involving access to unpublished technical data, technology or software source code – whether commercial or not – that is required:
   o For the "operation, installation maintenance, repair, overhaul <u>and</u> refurbishing of an item or software; or
   o Prior to serial production, such as design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts; or
   o In production stages, such as product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance   ☐No   ☐Yes

f. Involving access to the "source code" of proprietary or unpublished software ("source code" = the actual programming code, typically not accessible to the general use of the software).
☐No   ☐Yes

If the answer is "Yes" to any of the parts of the previous question, then you need to consult with CFR to investigate any licensing requirements.

Form completed by:

Name: _____   Date: _____

Title: _____   Telephone number: _____

For Carleton's policy, federal entity links, definitions, and more information, see Export Controls.

U.S. Export Controls on Release of Controlled Technology or Technical Data to Foreign Persons. The Export Administration Regulations (EAR) (15 CFR Parts 770-774) and the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130) require U.S. persons to seek and receive authorization from the U.S. Government before releasing to foreign persons in the United States controlled technology or technical data. Under both the EAR and the ITAR, release of controlled technology, technical data, or source code (except encryption source code) to foreign persons in the United States – even by an employer – is deemed to be an export to that person's country or countries of nationality.

Requirement to Certify Compliance with U.S. Export Control Regulations. The U.S. Government requires each company or other entity to certify that it has reviewed the EAR and ITAR and determined whether it will require a U.S. Government export license to release controlled technology or technical data to the beneficiary. If an export license is required, then the company or other entity must further certify that it will not release or otherwise provide access to controlled technology or technical data to the beneficiary until it has received from the U.S. Government the required authorization to do so.

Controlled Technology and Technical Data. The licensing requirements described above will affect only a small percentage because most types of technology are not controlled for export or release to foreign persons. The technology and technical data that are, however, controlled for release to foreign persons are identified on the EAR's Commerce Control List (CCL) and the ITAR's U.S. Munitions List (USML). The CCL is found at 15 CFF Part 774, Supp. 1. See http://www.access.gpo.gov/bis/ear/ear_data.html#ccl. The USML is at 22 CFR 121.1. See http://www.pmddtc.state.gov/regulations_laws/itar.html. The EAR-controlled technology on the CCL generally pertains to that which is for the production, development, or use of what are generally known as "dual-use" items. The ITAR-controlled technical data on the USML generally pertains to that which is directly related to defense articles.

The U.S. Department of Commerce's Bureau of Industry and Security administers the CCL and is responsible for issuing licenses for the release to foreign persons of technology controlled under the EAR. The U.S. Department of State's Directorate of Defense Trade Controls (DDTC) administers the USML and is responsible for issuing licenses for the release to foreign persons of technical data controlled under the ITAR. Information about the EAR and how to apply for a license from BIS are at www.bis.doc.gov. Specific information about EAR's requirements pertaining to the release of controlled technology to foreign persons is at www.bis.doc.gov/deemedexports. Information about the ITAR and how to apply for a license from DDTC are at www.pmdtc.gov. Specific information about the ITAR's requirements pertaining to the release of controlled technical data is at http://www.pmddtc.state.gov/faqs/license_foreignpersons.html. Middlebury employees with questions regarding the above regulatory controls are encouraged to inquire with a member of the Middlebury Export Controls Working Group [list URL here] for guidance.