		Note: If your submission has multiple commodity lines, enter "$1" in block 12 for each additional line. Do not split the value up between the different lines.
Block 14	Foreign Signatories, End Users, Transfer Territories and Space Launch Territories	**Foreign Licensees and Commercial/Private Non-Signatory End Users** Provide name and full physical address (to include postal code). For Government Licensees, identify the specific Department, Ministry or other entity representing the Government. **Example Entry:** Name: ABC Company Address: 1234 Fulham Rd City: London SW6 5BD Country: United Kingdom **Government non-signatory End Users:** A physical address is not required for foreign government end users who are not signatories to the agreement. However, a specific Department, Ministry or other entity must be identified. Applications that merely state "Government of" will be Returned Without Action. **Example Entry:** Name: Government of Sweden as represented by the Ministry of Defense Address: "End User" City: N/A Country: Sweden **Transfer Territories:** List any Additional Transfer Territories when transfers need to take place outside the territories of the foreign signatories or sublicensees. **Example Entry:** Name: "Transfer Territory" Address: "N/A" City: "N/A" Country: Georgia **Space Launch Territories:** For agreements involving space launch, list the territory from which space launch will occur if the launch territory differs from the territory of the Space Launch Provider. Multiple

		Launch complexes in a single territory may be made as a single entry. **Example Entry:** Name: Space Launch Territory – ABC Space Launch Address: Shetland, Cornwall City: "N/A" Country: United Kingdom **Non-Signatory Space Launch Provider:** Identify known or potential foreign Launch Service Providers and space launch vehicles. **Example Entry:** Name: "Name of Launch Service Provider" Address: Known/ potential space launch vehicle(s) City: "N/A" Country: Country Code of Service Provider Role: "Launch Service Provider"
Block 15		Check "Same as Block 5"
Block 16	Sublicensees; Intermediaries and Integrators	**TAAs/MLAs:** Provide name and address for all foreign sublicensees. **WDAs:** Provide name and address for all foreign intermediaries and integrators. **If the agreement has no foreign sublicensees or foreign intermediaries/integrators, enter the following:** - NAME – No Sublicensees - ADDRESS – N/A - CITY – N/A - COUNTRY – Enter the primary country of the transaction
Block 17		Check "Same as Block 5"
Block 18	Dual/Third Country Nationals; Foreign Launch Service Providers	List **all** countries of Dual and Third Country Nationals requested for DDTC vetting. If only § 126.18 is being used or no access for DN/TCNs is being requested, check "None" for Block 18. **Example Entry:** Name – "DN/TCN" Address – "DN/TCN" City – "DN/TCN"

		Country – Enter Country of DN/TCNs Role – "DN/TCN" **DN/TCNs from § 126.1(d)(1) countries and DNs from § 126.1(d)(2) countries must be identified by name in this Block. See Section 10.2.**
Block 19		Check "Same as Block 5"
Block 20		Check "Other". At a minimum, this block should include a concise narrative describing the purpose of the submission, as well as any other significant information, such as pending submissions. This narrative should be derived from the Transmittal Letter "Transaction Summary." If case was previously Returned Without Action, identify this as a resubmission of Case 050xxxxxx. **Amendments**: Begin this Block with "This is Amendment No. xx to TA/MA/DA xxxx-xx (050xxxxxxx)." Block 20 must provide a summary of the proposed agreement/amendment. The summary for an amendment should include the total scope of the agreement and not just what the amendment adds. **Proviso Reconsiderations:** Begin this Block with "Request for reconsideration of Proviso # XX to TA/MA/DA-xxxx-xx (050xxxxxx)." Then restate the original scope from Block 20.
Block 21	U.S. Signatories; U.S. Launch Service providers	**U.S. Signatories** Provide a full name and physical address (to include postal code). **Example Entry:** Name: ABC Company Address: 1234 Rickford Rd City: College Station, TX, 77843 Country: United States **Non-Signatory Space Launch Provider:** Identify known or potential foreign Launch Service Providers and space launch vehicles. **Example Entry:** Name: "Name of Launch Service Provider" Address: Known/ potential space launch vehicle(s) City: "N/A" Country: Country Code of Service Provider

		Role: "Launch Service Provider"
Block 22		Check the appropriate § 126.13[4] and Part 130 blocks. **Amendments:** Answer Part 130 based on the **Total Value** of the agreement, not the amendment value. **WDAs:** Part 130 is not applicable to WDAs since they do not have an associated value.

[4] If items "a" or "c" are applicable, a separate § 126.13 letter is not required. For all other entries, a separate § 126.13 letter must be attached to the DSP-5 vehicle. For § 126.13 letter guidance, see the DDTC website.

4 – Amendments to an Agreement

Once an agreement is approved by DTCL, any changes to the agreement must be made via an amendment. An amendment should be submitted as a conformed agreement that, if approved, supersedes the previously approved agreement.[5]

The DSP-5 vehicle reference number for the related amendments will not be numbered sequentially; however, the agreement number assigned to the base agreement will remain the same for subsequent amendments, with the next sequential amendment letter added to the base number (e.g., TA-9876-21 becomes TA-9876-21A). This also includes amendments that do not require execution by the agreement parties such as increases in value and applications that are returned without action. For this reason, DTCL recommends applicants track all amendments (major and minor) with numbers instead of letters. This will allow the applicant to keep track of minor amendments to the case without confusing DDTCs amendment letter with the applicant's amendment number.

4.1 – Transmittal Letter

An amendment transmittal letter should replicate the agreement transmittal letter except insofar as it specifically identifies what changes are being requested. The applicant identifies changes in the transmittal letter by annotating "NO CHANGE" or "CHANGE" after each required § 124.12 statement. All changes should be bolded for ease of review. Additionally, the § 124.12(a)(6) Valuation Table should be formatted with three value columns (see Section 7.2.2).

4.1.1. Additional Instructions for Amendments

a. **Transaction Summary.** Include the following information as part of the Transaction Summary:

(1) **Objective of the Amendment.** Provide a full list of the changes being requested in this submission. Any changes not requested in this list but included in the submission may not be reviewed or approved. The list should be provided in bullet format. Examples of modifications include but are not limited to:

(A) Expand scope to include:
- (i) Addition of new hardware
- (ii) Expansion of Statement of Work
- (iii) Transfer of additional technical data
- (iv) Expansion of sales, distribution, or marketing territory (new countries)
- (v) Addition of new programs

(B) Extend term of agreement from (current date) to (proposed date)
- (i) Add U.S. or foreign signatories
- (ii) Change name of U.S. or foreign signatory from (company) to (company)

[5] If amending a paper agreement, see the DDTC website for guidance on re-baselines.

(iii) Authorize sublicensing
(iv) Add sublicensees
(v) Add DN/TCNs
(vi) Increase value of agreement
(vii) Moderate increase of approved hardware for export
(viii) Convert from a TAA to an MLA

(2) **Original Purpose of the Agreement.** Provide a brief description (one or two paragraphs) of the original purpose of the agreement, how the agreement is being executed, who are the end-users, what is the scope of the effort, and an explanation of the commodity or program.

(3) **Relationship to the Original Agreement.** Briefly summarize modifications made in each previously approved amendment. Additionally, note status and date submitted for any other pending amendments. Explain how the modifications in the current request relate to what was originally approved. Describe any new technology (technical data) that will be transferred with this amendment. State whether any precedent of exports has been approved that may relate or pertain to this amended request. Attachments can be referenced with more detailed information, but a short description should be provided here.

b. **Congressional Notification.** If the agreement was previously notified, include the notification history in the Supplemental Information section. See Section 8 for additional guidance.

c. **Sales Report Summary.** For MLA and WDA amendments, provide a table reporting sales by year and total sales to date. This table does not replace the need to submit annual sales reports in accordance with § 124.9(a)(5).

NOTE: Sales reports must cover the entire life of an agreement. When amending an agreement which has been re-baselined, all sales under the previous agreement number must be accounted for in the Sales Report Summary.

Year	Dollar Value
2018	
2019	
2020	
Total	

d. **Export License History (DAs only).** For all WDA amendments, provide a table identifying all export licenses received in furtherance of the agreement and the total value authorized under each license. If the WDA has been previously re-baselined one or more times, make sure to

provide all export licenses that were received in furtherance of the previous agreement number(s).

License Number	Dollar Value
0500000001	
0500000010	
0500000020	
Total	

4.1.2. Partial Sample Transmittal Letter for an Amendment

NOTE: This is a **PARTIAL** sample. Only parts of the transmittal letter are displayed in order to demonstrate how to annotate changes. As stated above, an amendment transmittal letter should replicate the agreement transmittal letter with changes annotated in **bold text**. Full sample templates for all transmittal letter types can be found elsewhere in this document.

….

Subject: Proposed Amendment No. X to **TA (MA) xxxx-xx (050xxxxxx)** for the support of the How to Write Agreements Processor

….

Dear Director:

Submitted herewith is a submission package for proposed **Amendment No. 1** to the Technical Assistance (or Manufacturing Licensing) Agreement, for the support of the How to Write Agreements Processor. **ABC Company and the foreign party(ies) now desire to modify the agreement to accomplish the objectives listed below.**

OBJECTIVE OF AMENDMENT

Expand scope to include:
- Addition of new hardware
- Expansion of Statement of Work

Extend term of agreement
Increase value of agreement

ORIGINAL PURPOSE OF AGREEMENT

Provide a brief description (one or two paragraphs) of the original purpose of the agreement, how the agreement is being executed, who are the end-users, what is the scope of the effort, and an explanation of the commodity or program. The level of detail required here depends upon the

nature of the amendment request (i.e., scope changes will require more details than administrative changes). Bullet format is preferred.

RELATIONSHIP TO ORIGINAL APPROVAL

- Bullet format is preferred
- Briefly summarize modifications imposed by each previously approved amendment.
- Note status and date submitted for any pending amendments
- Explain how modifications in the current request relate to/differ from those authorizations previously approved.
- If pertinent, describe any new technology (technical data) that will be transferred with this amendment.
- If no new technology will be transferred, then so state.
- State whether any precedent exports have been approved that may relate or pertain to this amended request.
- Attachments can be referenced with more detailed information, but a short description should still be provided here.

REQUIRED INFORMATION

In accordance with § 124.12, the following information is provided:

(a)(1) DDTC Applicant Code is M-0000. **NO CHANGE.**

(a)(2) The parties to this agreement are as follows: **NO CHANGE.**

The foreign licensee(s)

XXX Technologies
Full Address (no P.O. Box)
Country

U.S. Signatories

ABC Company
1234 South Rd.
Anywhere, VA 98765

The purpose of this amendment is (restate the original scope and provide changes of scope in bold). **CHANGE**.

This agreement is valid until **March 31, 2021**. **CHANGE.**

(a)(3) There are no relevant U.S. government contracts under which equipment or technical data was generated, improved or developed and supplied to the U.S. government. **NO CHANGE.**

(a)(4) The highest U.S. military security classification of the equipment or technical data to be transferred under the terms of this agreement is Unclassified. **NO CHANGE.**

(a)(5) There are no patents on file concerning this agreement. **NO CHANGE.**

(a)(6) The estimated value of this agreement is as follows: **CHANGE.**

Line Number	Item	Currently Approved under TA xxxx-xx	Proposed Amendment	New Total
1	Technical Data and Defense Services	$1,000,000	**$4,500,000**	**$5,500,000**
	Hardware			
2	Permanent Export by DSP-5 or DSP-85 (Tooling/Support Equipment)	$21,000,000	**$31,000,000**	**$52,000,000**
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items) (MLA only)	N/A	N/A	N/A
4	Temporary Export by DSP-73 or DSP-85	$3,000,000	$0	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000	$0	$4,000,000
6	Total Licensed Hardware (Sum of lines 2, 3,4&5)	$28,000,000	**$31,000,000**	$59,000,000
7	Hardware Value for Congressional Notification (line 2)	$21,000,000	**$31,000,000**	**$52,000,000**
8	Hardware Manufactured Abroad (Line 3 plus work done by foreign licensees as result of the MLA) (**MLA only**)	N/A	N/A	N/A
9	AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)	$29,000,000	**$35,500,000**	**$64,500,000**
10	Congressional Notification Value (Sum of lines 1,7&8)	$22,000,000	**$35,500,000**	**$57,500,000**

(a)(7) There are no foreign military sales credits or loan guarantees involved in financing the agreement. **NO CHANGE.**

….

SUPPLEMENTAL INFORMATION:

….

This agreement was previously notified under DTC # xx-xx pursuant to Article 36(c) and/or Article 36(d) on (month/day/year) for $xxx,xxx,xxx under TA/MA-xxxx-xx. (Include this statement if the agreement was previously notified.) If this information was not provided in a

proviso from DTCL, provide the agreement/amendment number and calendar year of Notification. If the agreement was notified multiple times, provide information on all previous notifications).

<or>

This amendment does not require Congressional Notification.

SALES REPORT SUMMARY

For an MLA or WDA amendment, provide a table reporting sales by year and with total sales to date. If the agreement has been re-baselined previously, ensure that sales figures are provided for the entire life of the agreement. This table does not replace the need to submit annual sales reports in accordance to § 124.9(a)(5).

Year	Dollar Value
2018	
2019	
2020	
Total	

EXPORT LICENSE SUMMARY

For a WDA amendment, provide a table identifying all export licenses received in furtherance of the agreement over the entire life of the agreement and the total value authorized under each license.

License Number	Dollar Value
0500000001	
0500000010	
0500000020	
Total	

4.2 – Proposed Agreement

Amendments should be "conformed" or consolidated. In other words, all major amendments should be submitted as entire agreements with proposed changes identified by **bolded text** (not "track changes").[6] Applications that simply describe which sections or articles to the agreement are being modified may be Returned Without Action.

For amendments involving ONLY an increase of value of the agreement that does not result in Congressional Notification, a Letter of Transmittal per § 124.12 is the only required document needed with the DSP-5 vehicle. Since these changes do not impact the agreement itself, there is no requirement to submit any document for execution by all parties.

4.2.1. Additional Instructions

a. **WHEREAS Clauses –** In addition to describing the agreement as a whole, the WHEREAS clauses should be used to describe any changes to the program itself and identify the roles of any new parties to the agreement.

b. **NOW THEREFORE Clauses –** In addition to providing a summary of the program as a whole, the first clause should provide a concise summary of the proposed changes to the agreement.

c. **§ 124.7(a) and § 124.14(b) Requirements.** Proposed changes to § 124.7(a) and § 124.14(b) information must be integrated into (or removed from) the previously approved agreement when submitted. If a separate attachment or exhibit is referenced in the agreement, submit a copy of the attachment or exhibit since it is an integral part of the agreement, and identify any modifications made to the attachment or exhibit.

[6] Typos and minor administrative mistakes do not need to be bolded.

4.3 – Minor Amendments

a. In accordance with § 124.1(d), amendments which only alter delivery or performance schedules, or other minor administrative amendments which do not affect in any manner the duration of the agreement or the clauses or information which must be included in the agreement do not have to be submitted to DTCL for approval. The applicant must upload a copy of the minor amendment to the DSP-5 vehicle of the most recently approved agreement/amendment within 30 days of execution.

b. Most changes via minor amendment require signatures of all the parties to the agreement **after** the change is made. If the changes are made prior to concluding (signing) the original agreement, then a separate submission is not required and the applicant can highlight or explain the changes in the cover letter provided with the copy of the concluded agreement. Minor amendments must be "conformed" or consolidated. In other words, all minor amendments must be submitted as entire agreements with proposed changes identified by bolded text (not "track changes").

c. The following changes can be made without DTCL approval as long as they in no way affect the scope of the agreement:

(1) Correct typos or minor mistakes in original submission.
(2) Correct address of a U.S. or foreign entity (in the same country)
(3) For the same legal entity, add or remove additional locations/addresses in the same country
(4) For the same legal entity, add the phrase "and all locations in [Country X]"
(5) Correct the official name of a U.S. or foreign entity
(6) Correct the official name of a U.S. or foreign entity after a name change notification is posted on the DDTC website (the notification must state that name changes for that party may be made to existing agreements as a minor amendment)
(7) Make minor language changes needed before parties will sign
(8) Remove a signatory from the agreement
(9) Remove a sublicensee from the agreement
(10) Correct delivery schedules, if cited in the agreement (expiration date of agreement must remain unchanged, and only dates of delivery may be modified [i.e., no changes to alter scope])
(11) To remove hardware or technical data transitioned to the jurisdiction of the Department of Commerce or otherwise no longer subject to the USML or to change transitioned items to paragraph (x)
(12) Add the "Expedited Execution" sublicensee clause
(13) Add the Foreign Person Employee clause

Note: For foreign licensee name changes, if an ownership change or other transfer has taken place, an amendment must be submitted in accordance with § 124.1(c) and receive approval from DTCL, unless a GC has been submitted and DTCL has issued a GC response authorizing the change via minor amendment. For additional information on name changes of a foreign signatory, see **General Correspondence for Amendment of Existing ITAR Authorizations Due to Foreign Entity Name Change** available on the DDTC website.

5 – Uploading Documents to DECCS

Both submission and post-approval documentation should be uploaded to the associated DSP-5 file. Do **NOT** create a new DSP-5 entry. This includes any additional or updated documents requested by the analyst assigned to your case.

All uploaded documents should be ".pdf" files, and when possible, should be created with searchable text.

5.1 – Uploading Submission Documents

To assist DTCL in its adjudication of agreement/amendment submissions, applicants should use Table 5.1 to identify the proper Upload Menu Option when uploading each file.

Document Type	Upload Menu Option
Transmittal Letter	Supplementary Explanation of Transaction
New Agreement/Amendment	Contract
§ 126.13 Certification Letter	Certification Letter
Positive Part 130 Statement	Part 130 Report
Last approved Agreement/Amendment	Precedent (identical/similar) Cases

Table 5.1 – Attachment Upload Menu Options

Additional Considerations

a. To facilitate the technical review of the submission, the name of the ".pdf" file being uploaded should be as descriptive as possible. For example:
   (1) Transmittal letters should be named "Transmittal Letter.pdf"
   (2) Agreements with attachments should be named "Agreement with Attachments.pdf"
   (3) If *separate* supporting documents or attachments are uploaded, the file name of these documents should clearly identify what the document is (e.g., "F-4 Forward Fuselage Drwg No 12345.pdf", not simply labeled as "technical data.pdf")

b. When USML Categories I, II or III are entered in Block 11, and if prompted to upload an Import Certificate, upload a letter stating "no certification is required."

5.2 – Uploading Post-Approval Documents

Post-approval documentation for agreements (e.g., executed agreements, sales reports, and unexecuted/termination notifications) should be uploaded to the associated DSP-5 vehicle.

5.2.1. Submitting Executed Agreements/Amendments. Once an agreement or amendment is executed by all parties, the applicant must upload an electronic copy of the signed agreement/amendment to the respective approved license within 30 days from the date that the agreement is concluded as required by § 124.12(b)(3).

a. If changes are made prior to concluding (signing) the agreement, include a cover letter that provides a reason for the changes. If no changes are made to the DTCL-approved version of the agreement, a cover letter is optional (but see 3 and 4 below).

b. In order to ensure that the Defense Counterintelligence and Security Agency (DCSA)[7] receives a copy of all approved agreements involving the release of classified defense articles as required by § 124.1(b), applicants also should submit a copy of the executed agreement to DCSA within 30 days of execution.

c. Executed copies of MLAs must be accompanied by a cover letter that includes the information required under § 124.4(b)(1)-(4). The letter must provide an estimate of the quantity of each defense article to be manufactured abroad.

d. Minor amendments should be uploaded to the DSP-5 vehicle of the most recently approved agreement/amendment and be accompanied by a cover letter that provides an explanation of the amendment.

5.2.2. Submitting Signed DSP-83s. When a requirement is placed upon the applicant to execute DSP-83s for the transfer of classified technical data or technical data for the manufacture of SME abroad, the applicant must upload a copy of the signed DSP-83s along with the executed copy of the agreement or amendment to the respective approved license.

The original DSP-83 is maintained by the applicant.

5.2.3. Annual Status Updates. If an agreement is not executed within one year of approval by DTCL, submit a written report to DTCL summarizing the status of the agreement. This electronic report should be uploaded to the respective approved license for the agreement or amendment. This report is to be submitted on an annual basis based on the date of the issuance of the DTCL approval until such time as the requirements of § 124.4 or § 124.5 have been satisfied.

5.2.4. Notification of Initial Technical Data Export. Pursuant to § 123.22(b)(3)(ii), prior to the initial export of any technical data or defense services authorized in an agreement, the applicant must electronically inform DDTC that exports have begun. A letter must be uploaded to the

[7] The Defense Security Service (DSS) was renamed the Defense Counterintelligence and Security Agency (DCSA) effective June 20, 2019. Note that the ITAR has not been updated and still references the DSS.

approved DSP-5 vehicle of the base agreement or the first amendment under which the transfer of technical data or defense services will occur. Subsequent amendments do not require another letter documenting the initial transfer of technical data or defense services, even if an amendment increases the scope of the technical data and/or defense services that may be transferred.

5.2.5. Notification of Decision not to Conclude an Agreement or Amendment. Pursuant to ITAR § 124.5, the Applicant must inform DDTC within 60 days if a decision is made not to conclude an agreement or amendment. The notification letter should be attached electronically to the respective approved DSP-5 vehicle for the agreement or amendment and include the applicant registration code and the agreement or amendment number as identified in the DTCL approval. When a decision is made not to conclude an amendment to an agreement, the notification letter must specify the amendment will not be concluded and clearly state whether the rest of the agreement is still active.

5.2.6. Termination of an Agreement. Pursuant to ITAR § 124.6, the applicant must inform DDTC in writing of the impending termination of the agreement not less than 30 days prior to the expiration or termination of such agreement. The notification letter should be uploaded to the approved DSP-5 vehicle of the base agreement and must include the applicant registration code and the agreement number as identified in the DTCL approved license. When terminating a Manufacturing License Agreement, the applicant is to submit a final sales report summary with the termination letter. When terminating a Warehouse and Distribution Agreement, the applicant is to submit a final activity summary with the termination letter.

5.2.7. Annual Sales Reports for MLAs and WDAs. In accordance with § 124.9(a)(5) and § 124.14(c)(6), the parties to the agreement must submit an annual report of sales or other transfers pursuant to the agreement, by quantity of licensed articles, type, U.S. dollar value, and purchaser or recipient. This report of sales is for the sale of manufactured or distributed hardware alone. Report the transfer of hardware: if an order was placed but the hardware has not yet been transferred, wait to report that hardware in the year when that hardware is actually transferred. For MLAs, reported sales must indicate the total value of the manufactured end items, to include any hardware that was exported and incorporated into the manufactured end items.

a. An electronic copy of the Annual Sales Report should be uploaded to the respective approved license for the base agreement.

b. For a new MLA or DA, an Annual Sales Report is not required until the agreement has been executed since sales/transfers cannot occur until the agreement has been executed. The first Annual Sales Report would be required for the year in which the agreement was executed.

c. For an MLA or DA that was not active in a particular year, a report of "No Sales" is required.

d. Annual Sales Reports may cover either calendar or fiscal years.

e. It is suggested that each year's annual sales report be added to the annual sales report document from the previous year and submitted in a single .pdf file (i.e. a running list of annual sales

reports in chronological order in a single .pdf file for each annual submission). See Table 5.2 for a sample format.

DTCL Case_____		CY/FY_____	
Item	Recipient	Quantity	U.S. $ Value
TOTAL			

Table 5.2 – Annual Sales Report

Part 2
Additional Guidance

6 – Agreement Duration and Expiration Date

a. Applicants determine the duration and expiration dates of their agreements. The applicant may select any term not to exceed ten years in duration from the current calendar year. Applicants may terminate an agreement at any time prior to the expiration date.

b. In order to avoid an overwhelming number of simultaneous amendments for duration extensions, DTCL uses an Expiration Date Matrix, distributing expiration dates throughout the calendar year. Applicants should use the following matrix when determining the expiration month for their agreement. Select the month that corresponds with the first letter of the applicant name on the official DDTC registration.

Month of Expiration	Registered Company Name
January	D, X, Y and Z
February	S and C
March	A and M
April	G and V
May	H and T
June	B and Q
July	N and F
August	L and W
September	U and P
October	R and I
November	O and E
December	J, K and all Numbers

Table 6.1 – Expiration Date Matrix

Examples:
- XYZ Defense Systems Inc. will have an expiration date of January 31, 20xx.
- XYZ Systems, LLC, a subsidiary of ABC Company (the registered company), will have an expiration date of March 31, 20xx.

c. An applicant can submit a proposed amendment requesting to extend the duration of an agreement. Each amendment can request an extension out to ten years from the year the amendment is submitted. An amendment request to extend the duration of an agreement must be submitted at least 60 days in advance of its expiration. Note: if the applicant is concerned about potential expiration of the currently approved agreement when submitting an amendment, the applicant may request an extension of the currently approved agreement in the transmittal letter.

d. The DSP-5 vehicle will automatically default to an expiration date of 48 months. This does not reflect the actual expiration of the agreement itself (the DSP-5 vehicle is simply used as the means for transmitting the agreement throughout the approval process). The actual expiration date approved for the agreement is specified in Proviso #1 of all authorizations.

7 – Establishing Value

Agreement value is made up of three components: Technical Data/Defense Services; Licensed Hardware; and Hardware Manufactured Abroad (if applicable). The sum of these three components is the **Agreement Total Value**.

Note: WDAs have no associated value.

7.1 – Components of Value

7.1.1. Technical Data and Defense Services - The value of Technical Data and Defense Services is often combined into a single value in the valuation matrix.

a. Technical Data – the value assigned to the technical data being transferred to the foreign parties.
b. Defense Service – usually defined as the manpower costs incurred by the U.S. company in the agreement.

7.1.2. Hardware – The licensed hardware value has three (TAAs) or four (MLAs) components:[8]

a. **Permanent Exports** – For TAAs, the total value of all USML hardware being permanently exported by the applicant via separate DSP-5 or DSP-85 license(s) in furtherance of the agreement.
   (1) For MLAs, this value is further broken down as follows:
      (A) **Tooling/Support Equipment –** The value of permanently exported USML hardware not incorporated in the item the foreign licensee(s) is(are) manufacturing. This value usually includes tooling and test equipment needed during the manufacturing process, but that will not be sold to the ultimate end user of the manufactured items.
      (B) **Kits and Components –** The value of permanently exported USML hardware incorporated in the manufactured end-item. This usually includes kits or components the foreign licensee(s) will use in the ultimate end-items through the licensed manufacturing process.

b. **Temporary Exports** – The value of all USML hardware being temporarily exported by the applicant in furtherance of the agreement via DSP-73 or DSP-85 license(s).

c. **Temporary Imports** – The value of all USML hardware being temporarily imported by the applicant in furtherance of the agreement via DSP-61 or DSP-85 license(s).

7.1.3. Hardware Manufactured Abroad – This component is applicable to MLAs only. It is the projected production or sale value of defense articles being manufactured abroad under the license. This includes the value of any kits or components exported in furtherance of the agreement and

[8] Applicants are not required to provide an estimated repair and replacement value to obtain separate licenses for repair and replacement activities. All hardware authorizations approved by DTCL will include provisions to allow the applicant to apply for separate licenses for repair and replacement.

incorporated into the hardware manufactured abroad, and also includes the increase in value caused by the work the foreign licensee(s) accomplish in the manufacturing process.

7.2 – The Valuation Table

a. The valuation table should be included in the § 124.12(a)(6) paragraph of the transmittal letter for all TAA and MLA submissions. The applicant should address each of the key elements, even though there may be no fee pertaining to, or a $0 value attributed to, a particular element. The value of each of these elements can be an estimate, but should extend over the duration of the agreement and not beyond.

Line Number	Item	Value
1	**Technical Data and Defense Services**	$1,000,000
	Hardware	
2	Permanent Export by DSP-5 or DSP-85 (all permanent hardware for TAA, Tooling/Support Equipment for MLA)	$21,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items, MLA only)	$20,000,000
4	Temporary Export by DSP-73 or DSP-85	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000
6	**Total Licensed Hardware (Sum of lines 2, 3, 4 & 5)**	**$48,000,000**
7	Hardware Value for Congressional Notification (line 2)	$21,000,000
8	Hardware Manufactured Abroad (Line 3 plus work done by foreign licensees as result of the MLA. (**MLA only**)	$25,000,000
9	**AGREEMENT TOTAL VALUE (Sum of lines 1, 6 & 8)**	**$74,000,000**
10	Congressional Notification Value (Sum of lines 1, 7 & 8)	$47,000,000

Table 7.1 Valuation Table for a New Agreement

b. A Congressional Notification Value is required to be calculated for all agreements. This Congressional Notification Value includes the value of technical data and defense services as well as permanently exported hardware and the value of the items manufactured abroad for an MLA. It does not include the value of hardware exported for incorporation into the manufactured end-item nor any temporarily imported or exported defense hardware. See below for instructions on calculating the Congressional Notification value.

7.2.1. Determining Congressional Notification Values

a. **Hardware Value for Congressional Notification –** This value is equal to the Permanent Exports value (TAAs) or the Permanent Exports (Tooling/Support Equipment) value for MLAs. Other hardware values are not included in the Hardware Value for Congressional Notification.

b. **Congressional Notification Value –** The CN value is the sum of the following three values: **CN Value =** Technical Data/Defense Services (Line 1) + Hardware Value for Congressional Notification (Line 7) + Hardware Manufactured Abroad (Line 8)

7.2.2. Valuation Table for Amendments

The valuation table for an amended agreement will have three columns: the currently approved value, the proposed value increase (or decrease), and the new Total Agreement Value. Some amendments are administrative in nature and have, by definition, no value (e.g., novations). In these cases, enter $0 for the line items in the "Proposed Amendment" column. Amendments adding hardware, expanding the scope, expanding the sales territory or extending the duration of an agreement will likely change the value of the base agreement, and thus an estimated value of the amendment must be submitted.

Line Number	Item	Currently Approved under MA-xxxx-xx	Proposed Amendment	New Total
1	Technical Data and Defense Services	$1,000,000	**$4,500,000**	**$5,500,000**
	Hardware			
2	Permanent Export by DSP-5 or DSP-85 (all permanent hardware for **TAA**, Tooling/Support Equipment for **MLA**)	$21,000,000	**$1,000,000**	**$22,000,000**
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items, **MLA only**)	$20,000,000	**$4,000,000**	**$24,000,000**
4	Temporary Export by DSP-73 or DSP-85	$3,000,000	$0	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000	$0	$4,000,000
6	**Total Licensed Hardware (Sum of lines 2, 3, 4 & 5)**	$48,000,000	**$5,000,000**	**$53,000,000**
7	Hardware Value for Congressional Notification (line 2)	$21,000,000	**$1,000,000**	**$22,000,000**
8	Hardware Manufactured Abroad (Line 3 plus work done by foreign licensees as result of the MLA) (**MLA only**)	$25,000,000	**$5,000,000**	**$30,000,000**
9	**AGREEMENT TOTAL VALUE (Sum of lines 1, 6 & 8)**	**$74,000,000**	**$14,500,000**	**$88,500,000**
10	Congressional Notification Value (Sum of lines 1, 7 & 8)	$47,000,000	$10,500,000	$57,500,000

Table 7.2 Valuation Table for an Amendment to an Agreement

7.3 – Agreements with MDE

a. The Congressional Notification threshold for an agreement involving the export of MDE (see section 36 (22 U.S.C. § 2776) (c) of the Arms Export Control Act) is determined by the value of the MDE Hardware (permanent export) alone. However, as with other agreements, the Congressional Notification *value* includes technical data, defense services, and all permanent hardware exports (and for MLAs, the hardware manufactured abroad minus the permanently exported hardware incorporated into the manufactured item).

b. For agreements proposing the export of MDE, it is critical for the applicant to break out the value of MDE from the value of the other hardware. Line 2, "Permanent Export by DSP-5 or DSP-85," should be divided into two lines as shown in Table 7.3 below. Assign the MDE value to line 2.a and the non-MDE value to line 2.b.

Line Number	Item	Value
1	**Technical Data and Defense Services**	$1,000,000
	Hardware	
2.a	Permanent Export by DSP-5 or DSP-85 **(MDE)**	$16,000,000
2.b	Permanent Export by DSP-5 or DSP-85 **(non-MDE** permanent hardware for **TAA**, Tooling/Support Equipment for **MLA)**	$22,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items. (**MLA only**)	N/A
4	Temporary Export by DSP-73 or DSP-85	$1,000,000
5	Temporary Import by DSP-61 or DSP-85	$500,000
6	**Total Licensed Hardware (Sum of lines 2a, 2b, 3, 4 & 5)**	**$39,500,000**
7	Hardware Value for Congressional Notification (lines 2a and 2b)	$38,000,000
8	**Hardware Manufactured Abroad** (Line 3 plus work done by foreign licensees as result of the MLA)	N/A
9	**AGREEMENT TOTAL VALUE (Sum of lines 1, 6 & 8)**	**$40,500,000**
10	Congressional Notification Value (Sum of lines 1, 7, & 8)	$39,000,000

Table 7.3 Valuation Table for an agreement with MDE

Assuming the table above represents the value breakout for an agreement involving a non-NATO+5 country, Congressional Notification would be required based on the MDE value ($14M threshold for non-NATO+5) even though the *total* CN value of $39M is still below the non-MDE threshold of $50M.

7.4 – Agreements Utilizing Hardware Exemptions

If exporting by an exemption (e.g., the Canadian exemption), the value of permanent exports conducted pursuant to the exemption should be documented in the value table. (For guidance specific to the use of the § 123.16(b)(1) exemption see Section 20.) This ensures proper reporting to Congress. Permanent exports via exemption for kits and components incorporated into manufactured items for an MLA do not need to be documented in the table since those exports do not affect the congressional notification value.

Line Number	Item	Value
1	Technical Data and Defense Services	$1,000,000
	Hardware	
2	Permanent Export by DSP-5 or DSP-85 (Tooling/Support Equipment)	$11,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items) (MLA only)	$10,000,000
4	Temporary Export by DSP-73 or DSP-85	$3,000,000
5	Temporary Import by DSP-61 or DSP-85	$4,000,000
6	**Total Licensed Hardware (Sum of lines 2, 3, 4 & 5)**	**$28,000,000**
7	Hardware Value for Congressional Notification (line 2 plus line 10)	$23,000,000
8	Hardware Manufactured Abroad (Line 3 plus work done by foreign licensees as result of the MLA) **(MLA only)**	$20,000,000
9	**AGREEMENT TOTAL VALUE (Sum of lines 1, 6 & 8)**	**$49,000,000**
10	Permanent Export by (identify exemption) (Tooling/Support Equipment)	$12,000,000
11	Congressional Notification Value (Sum of lines 1, 7, & 8)	$44,000,000

Table 7.4 Valuation for Usage of an Exemption

7.5 – Decrementing Value

The applicant may decrement the value of an agreement. In order to decrement value, enter negative values in the "Proposed Amendment" column of the valuation table. If decreasing the value of permanently exported hardware, the valuation table must retain, at a minimum, the hardware value of all previously approved IFO licenses. Section (a)(6) of the transmittal letter should explain that the hardware value represents previously approved IFO licenses, not new hardware exports.

Line Number	Item	Currently Approved under TA xxxx-xx	Proposed Amendment	New Total
1	Technical Data and Defense Services	$3,000,000	**-$2,000,000**	$1,000,000
	Hardware			
2	Permanent Export by DSP-5 or DSP-85 (all permanent hardware for **TAA**, Tooling/Support Equipment for **MLA**)	$5,000,000	**-$4,000,000**	$1,000,000*
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items, **MLA only**)	N/A	N/A	N/A
4	Temporary Export by DSP-73 or DSP-85	$1,000,000	**-$1,000,000**	$0
5	Temporary Import by DSP-61 or DSP-85	$0	$0	$0
6	**Total Licensed Hardware (Sum of lines 2, 3,4&5)**	$6,000,000	**-$5,000,000**	**$1,000,000***
7	Hardware Value for Congressional Notification (line 2)	$5,000,000	**-$4,000,000**	$1,000,000
8	Hardware Manufactured Abroad (Line 3 plus work done by foreign licensees as result of the MLA) (**MLA only**)	N/A	N/A	N/A
9	**AGREEMENT TOTAL VALUE (Sum of lines 1,6&8)**	$9,000,000	**-$7,000,000**	**$2,000,000**
10	Congressional Notification Value (Sum of lines 1,7&8)	$8,000,000	**-$6,000,000**	**$2,000,000**

* This amendment removes all hardware from the scope of the agreement. The hardware value in lines 2 and 6 represent the value of previously approved IFO license 050123456.

Table 7.5 Decrementing an Agreement

8 – Congressional Notification

DTCL handles two types of Congressional Notifications mandated by section 36 (22 U.S.C. § 2776) of the Arms Export Control Act: Notifications under section 36(c) for value and Notification under section 36(d) for the manufacture of significant military equipment (SME) abroad.

a. **36(c) Value-based Notification.** In the case of an application for a license to export major defense equipment (MDE) or defense articles or defense services exceeding specific values, the Arms Export Control Act requires a certification be provided to Congress prior to granting any license. See section 36(c) of the Arms Export Control Act for the notification thresholds.

b. **36(d) Notification for the Manufacture of SME.** Any technical assistance agreement or manufacturing license agreement that involves the manufacture abroad of SME shall be notified regardless of value. See section 36(d) of the Arms Export Control Act.

8.1 - Re-Notification Thresholds

Any substantial alterations to a previously notified agreement will likely result in a re-notification on the transaction to Congress.

8.1.1. Agreements Previously Notified under 36(c)

For agreements previously notified pursuant to section 36(c) of the AECA, the following amendments will be re-notified:

a. An increase in value by 10% or more of a prior 36(c) Notification
b. An increase in value by 10% or more MDE value of a prior 36(c) Notification for MDE
c. An increase in the overall value of an agreement previously notified because of MDE value that now exceeds a general 36(c) Notification thresholds ($50 million or $100 million) for defense articles or defense services
d. An increase in value from a prior 36(c) Notification that is equal to or larger than the respective Congressional Notification threshold (e.g., a non-NATO+5 program is originally notified for $1B. Even though an amendment for $50M is less than a 10% increase, it would prompt re-notification since the amendment value ($50M) exceeds the applicable Congressional Notification threshold)
e. A significant expansion of scope (i.e., additional program phases, any upgrade to the capabilities authorized in the previously notified agreement, or addition of a new country involved in terms of the countries of the foreign licensees or foreign end-users)
f. The addition of new countries to the authorized marketing, distribution, or sales territories

8.1.2. Agreements Previously Notified under 36(d)

For agreements previously notified pursuant to 36(d) of the AECA, the following amendments will be re-notified:

a. Increase in authorized sales territory of a prior 36(d) Notification

b. Increase in value of the 36(d) Notification when such value exceeds 36(c) thresholds
c. A significant expansion of scope (i.e., additional program phases, any upgrade to the capabilities authorized in the previously notified agreement, or addition of a new country involved in terms of the countries of the foreign licensees or foreign end-users)

NOTE: *Export licenses submitted in furtherance of an agreement or amendment that has been Congressionally Notified do not require Congressional Notification since the hardware value is included as part of the agreement itself.*

8.2 - Submission of Agreements Requiring Congressional Notification

It is incumbent upon the applicant to identify those applications that require Congressional Notification. For all agreements requiring Congressional Notification, the applicant should include specific information as part of the Transmittal Letter. See Section 1.1.

a. Include the following with all agreement submissions that require Congressional Notification:

(1) **Signed Business Contract.** This contract is between the applicant and the Foreign Licensee and is required to be signed by both parties when received at DTCL.

(2) **Executive Summary.** The executive summary is a clear, concise summary of the proposed agreement. It should address the parties to the agreement and their roles, summarize the scope of the agreement, and provide a brief description of defense articles and services to be provided. When developing this summary, the applicant should develop the document understanding that it may accompany the Notification to Congress in order to provide clarity to the Notification package. This summary should be approximately one to two pages in length.

(3) **Statement of Offsets.** Offsets are arrangements that ensure the award of a contract. Direct offsets are directly related to the activity in the proposed agreement (i.e., foreign country industrial participation). Indirect offsets usually relate to future contracts or projects the U.S. applicant plans to conduct with the foreign company or country (e.g., monetary assistance in building a hospital or future sales to that company or country). If offsets are included, the applicant should provide a complete summary of the offset agreement to include the percentage of direct and indirect offsets, what these offsets involve, and where they are found in the contract. This should be provided as part of the Executive Summary.

b. When exceptional circumstances prevent the inclusion of these documents with the request, the applicant should describe why the documents are not included and when they will be provided. DTCL may accept and conduct initial staffing of requests exceeding Notification thresholds that do not include these documents; however, if these documents are not received at the time the initial staffing is complete, the request may be returned without action. DTCL cannot proceed beyond initial staffing without these documents.

9 – Sublicensing

Depending on the scope of an agreement, a foreign licensee (signatory) may be required to subcontract work in order to meet its contractual requirements. DTCL places no restrictions on subcontracting so long as the subcontractors do not require access to USML controlled defense articles.

If, on the other hand, subcontractors require access to USML controlled defense articles, they are referred to as **sublicensees**.

For the purposes of an ITAR agreement, sublicensing by a foreign signatory involves the reexport or retransfer of USML controlled defense articles (including technical data) by the foreign signatory to a foreign third party who is not a signatory to the agreement, but whose participation based on the scope of the agreement and work-share requirements is essential to fulfilling the objectives of the agreement. There are no direct transfers of defense articles, technical data, or defense services between the U.S. parties to the agreement and the sublicensees.

Example: To meet its contractual requirements, a foreign licensee requires testing assistance from an additional foreign company (Tester Ltd.). Tester Ltd. requires specific USML technical data from the foreign licensee to conduct the test but requires no interaction with the U.S. Applicant. Tester Ltd. is considered a sublicensee.

9.1 – General Guidance on Sublicensing

a. Direct transfer of defense articles (including technical data) or defense services between the U.S. signatories to an agreement and approved sublicensees is not authorized. If such transfer is required, the identified sublicensee should be added as a signatory to the agreement.

b. Foreign sublicensees are authorized to transfer defense articles (including technical data) among themselves and the foreign signatories so long as they are authorized to receive the defense articles per the scope of the agreement.

c. Since all U.S. Persons must be separately authorized to transfer defense articles (including technical data) and/or defense services to foreign parties, applicants are no longer required to include a statement concerning sublicensing to U.S. Persons in the agreement.

d. Prior to receiving any transfer of defense articles (including technical data), approved sublicensees must sign a Non-Disclosure Agreement (NDA), which references the agreement number and includes § 124.8(a) and, as applicable, the § 124.9 and contract employee clauses. The applicant must maintain the NDA for a period of five years beyond the expiration or termination of the agreement as amended and have NDAs available for inspection by the U.S. government. Foreign licensees are not required to sign the sublicensee NDA.

9.2 – Requests for Foreign Sublicensing

9.2.1 Agreement Language

a. When requesting sublicensing authorization, the following language should be included in the agreement:

"Sublicensing rights are granted to the foreign licensees (or list the specific foreign licensee). Sublicensees are identified in Attachment ___. Sublicensees are required to execute a Non-Disclosure Agreement (NDA) prior to provision of, or access to the defense articles including technical data. The executed NDA, referencing the DDTC Case number and incorporating all the provisions of the Agreement that refer to the United States government and the Department of State (i.e., § 124.8(a) and § 124.9), will be maintained on file by (the applicant) for five years from the expiration of the agreement."

b. Additionally, the following information should be provided for each sublicensee: full legal name, full address, role in the agreement, and a summary of the defense articles and technical data to be transferred to the sublicensee. It is recommended that you provide the information in an attachment in table format. See the example below:

Name	Address	Role	Defense articles including Technical Data to be transferred
ABC Company	123 4th Street City Country	Testing support	Testing data/results

9.2.2 - DSP-5 Vehicle Requirements for Sublicensing

Sublicensees should be identified in **Block 16** of the DSP-5 vehicle. Sublicensees not identified on the DSP-5 vehicle will not be authorized. If sublicensing is not requested, enter "No Sublicensees" in block 16.

10 – Dual and Third Country Nationals

Per § 120.51(b), the "release outside the United States of technical data to a foreign person is deemed to be a reexport to all countries in which the foreign person has held or holds citizenship or holds permanent residency." Therefore, authorization is required to transfer defense articles or defense services to dual and third country nationals of foreign licensees and sublicensees. Approval of a DN/TCN employee only authorizes transfer to the employee; it does not authorize export or reexport to the country of which the employee is a national.

10.1 – General Guidance on Dual and Third Country Nationals

a. **Dual National (DN)** – An individual who holds nationality from the country of their employer who is a foreign licensee (or sublicensee) to the agreement, and also holds nationality from one or more additional countries.

b. **Third Country National (TCN)** – An individual who holds nationality from a country other than the country of their employer who is a foreign licensee (or sublicensee) to the agreement.

c. The U.S. applicant is responsible for determining the nationality(ies) of all individuals that might have access to defense articles (including technical data) or defense services. DN/TCN access may be authorized as part of the agreement approval (DDTC vetting) or via exemption (see Section 10.3 for applicable exemptions).

d. The U.S. applicant should coordinate which DN/TCN options will be used and is responsible for incorporating them, as appropriate, into the agreement. If requesting DDTC vetting of DN/TCNs, follow the instructions in Section 10.2 (for non-§ 126.1 nationals) or Section 10.3 (for § 126.1 nationals). If relying on an exemption, refer to Section 10.4.

10.2 – Requests for DDTC Vetting of Non-§ 126.1 Nationalities

10.2.1 Agreement Language

a. **Unclassified Access.** When requesting that DDTC provide authorization for DN/TCN employees, the following language must be included in the agreement:

"Pursuant to § 124.8(a)(5), this agreement authorizes access to unclassified defense articles, to include technical data, or defense services by individuals who are dual/third country national employees of the foreign licensees (and the approved sublicensees – if applicable). The exclusive nationalities authorized are (*list all nationalities of the employees.*) Prior to any access, the employee must execute a Non-Disclosure Agreement (NDA) referencing this DDTC case number. The applicant must maintain copies of the executed NDAs for five years from the expiration of the agreement."

b. **Classified Access.** DN/TCNs who require access to classified defense articles, to include technical data, must be vetted by DDTC unless they qualify for one of the country specific exemptions (see Section 10.4.2). When requesting authorization for DN/TCN employees to access classified defense articles, the following language must be included in the agreement:

"Pursuant to § 124.8(a)(5), this agreement authorizes access to **classified** (and unclassified) defense articles, to include technical data, or defense services by individuals who are dual/third country national employees of the foreign licensees (and the approved sublicensees – if applicable). The exclusive nationalities authorized are (*list all nationalities of the employees requiring access to classified defense articles.*) Prior to any access, the employee must execute a Non-Disclosure Agreement (NDA) referencing this DDTC case number. The applicant must maintain copies of the executed NDAs for five years from the expiration of the agreement."

10.2.2 DSP-5 Vehicle Requirements

DN/TCN nationalities should be identified in **Block 18** of the DSP-5 vehicle. DN/TCN nationalities not identified on the DSP-5 vehicle are not approved. If no DN/TCN nationalities are being requested, enter "None".

10.2.3 Non-Disclosure Agreement

Prior to transfer of defense articles, including technical data, or defense services to approved DN/TCNs, the individual DN/TCN must sign an NDA which references the agreement number. The applicant must maintain the NDA for a period of five years beyond the expiration of the agreement as amended and have the NDA available for inspection by the U.S. government. A template NDA may be found on the DDTC website.

10.3 – Requests for DDTC Vetting of § 126.1 Nationals

a. When requesting DDTC vetting and approval of DN/TCNs from § 126.1 countries, DDTC requests additional information in order to make an authorization determination. The following information and supporting documentation should be included with the submission for DN/TCNs from § 126.1(d)(1) countries. It is optional for DN/TCNs from § 126.1(d)(2) countries:
(1) Full legal name of individual
(2) Nationality(ies)
(3) Date and place of birth
(4) Significant ties to § 126.1 country
(5) Copy of passport
(6) Resume
(7) Detailed job description

b. The applicant should also include any other pertinent information that would enable DDTC to address the DN/TCN employee's significant ties to a § 126.1 country. This could include, for example, the nature of the individual's travel to § 126.1 countries or contact with agents, brokers, and nationals of such countries.

c. When requesting approval to export or reexport to DN/TCNs from § 126.1 countries, it is important to specifically identify in the agreement and DSP-5 vehicle whether the individual is a **dual national** or a **third country national**.

10.3.1 General Guidance

a. **§ 126.1(d)(1) DN/TCNs.** DNs and TCNs from § 126.1(d)(1) countries are required to be identified by name and applicable country. In general, TCNs from § 126.1(d)(1) countries will be disapproved by DDTC. DNs from § 126.1(d)(1) countries will be considered by DDTC for approval when the primary nationality of the DN is a non-§ 126.1 country.

b. **§ 126.1(d)(2) DNs.** The applicant may choose whether or not to specifically identify 126.1(d)(2) DNs by name. However, if the DN is not specifically identified by name and additional supporting documentation is not included, DDTC will assess the individual as though the individual has strong ties with, or is a TCN from, the § 126.1(d)(2) country.

(1) If identifying the DN by name, use the language in 10.2.1.b below.
(2) If not identifying the DN by name, use the language in 10.2.1.c below.

c. **§ 126.1(d)(2) TCNs.** TCNs from § 126.1(d)(2) countries can be adjudicated by DDTC based on nationality alone. Therefore, a name or supporting documentation is not required. The applicant should include the country in the § 124.8(a)(5) request language identified in 10.1.1 above.

10.3.2 Agreement Language

In order to obtain approval to export to § 126.1 DN/TCN include the additional statements described below in the agreement. These statements are in addition to any other DN/TCN requests, to include other § 124.8(a)(5) requests. For classified access requests, replace "unclassified" with "classified (and unclassified)" in these paragraphs.

a. **§ 126.1(d)(1) TCNs.** Identify TCNs from § 126.1(d)(1) countries by name and applicable country in the agreement as follows:

> "Pursuant to § 124.8(a)(5), this agreement authorizes access to unclassified defense articles, to include technical data, or defense services by *(list full legal name of individual)*, an employee of *(list company of employment)*, who is a **third country national** of (*list § 126.1(d)(1) country).* Prior to any access, the employee must execute a Non-Disclosure Agreement (NDA) referencing this DDTC case number. The applicant must maintain copies of the executed NDAs for five years from the expiration of the agreement."

b. **§ 126.1(d)(1) and (d)(2) DNs (with name provided).** Identify DNs from § 126.1(d)(1) or (d)(2) countries by name and applicable country in the agreement as follows:

> "Pursuant to § 124.8(a)(5), this agreement authorizes access to unclassified defense articles, to include technical data, or defense services by *(list full legal name of individual)*, an employee of *(list company of employment)*, who is a **dual national** of (*list nationality other than § 126.1 country)* and *(list § 126.1(d)(1) or (d)(2) country)*. Prior to any access, the employee must execute a Non-Disclosure Agreement (NDA) referencing this DDTC case number. The applicant must maintain copies of the executed NDAs for five years from the expiration of the agreement."

c. **§ 126.1(d)(2) DNs (name not provided).** If the applicant opts not to supply the DN's name and other information listed above, include the following § 124.8(a)(5) statement:

> "Pursuant to § 124.8(a)(5), this agreement authorizes access to unclassified defense articles, to include technical data, or defense services by employees of the foreign licensees (and the approved sublicensees – if applicable) who are **dual nationals** of (*list nationality other than § 126.1 country)* and *(list § 126.1(d)(2) country).* Prior to any access, the employee must execute a Non-Disclosure Agreement (NDA) referencing this DDTC case number. The applicant must maintain copies of the executed NDAs for five years from the expiration of the agreement."

10.3.3 DSP-5 Vehicle Requirements

Add all § 126.1(d)(1) DN/TCNs by name in **Block 18** of the DSP vehicle. § 126.1(d)(2) DNs should be included in block 18 if the applicant intends to provide information that demonstrates the limitations of the DN's ties with the § 126.1(d)(2) country. The Address and Role fields of block 18 should identify whether the person is a DN or TCN; the City field should reflect all

applicable nationalities; and the Country field of Block 18 must reflect the applicable § 126.1 DN/TCN country (i.e., not the country of the employer):

> **Block 18. Name and address of foreign intermediate consignee**
> Name: < Enter Full Name of Individual >
> Address: < Enter DN (Dual National) or TCN (Third Country National) as applicable >
> City: < Enter the applicable countries > (e.g., if person is a national of Australia born in China, enter "China and Australia" in this field)
> Country: < Enter the country code for the § 126.1 country >
> Role: < Enter DN (Dual National) or TCN (Third Country National) as applicable >

§ 126.1(d)(2) TCNs may be added without including a name:

> **Block 18. Name and address of foreign intermediate consignee**
> Name: < Enter TCN >
> Address: < Enter TCN >
> City: < Enter TCN >
> Country: < Enter the country code for the § 126.1(d)(2) TCN >
> Role: < Enter DN/TCN >

10.3.4 Non-Disclosure Agreement

Prior to transfer of defense articles, including technical data, or defense services to approved § 126.1 DN/TCNs, the individual DN/TCN must sign an NDA which references the agreement number. The applicant must maintain the NDA for a period of five years beyond the expiration of the agreement as amended and have the NDA available for inspection by the U.S. government. A template NDA may be found on the DDTC website.

10.4 – Exemptions for Authorizing Dual and Third Country Nationals

10.4.1. § 126.18 Exemption

Foreign parties may choose to rely on the § 126.18 exemption to vet their own dual and third country nationals. In such situations, no additional clauses are required in the agreement. However, if the applicant or foreign party desire to have additional language addressing § 126.18, they may use the statement below. If used, it should be included in section § 124.7(a)(4)(c) of the agreement.

> "Transfers of defense articles, to include technical data, to dual nationals and/or third country nationals by foreign licensees, consignees, sub-licensees, and end users authorized in the agreement may be conducted in accordance with § 126.18."

Note that the § 126.18 exemption applies only to **unclassified transactions**.

10.4.2. Country Specific Exemptions

The State Department has concluded arrangements with the Governments of Canada, Australia and the Netherlands with respect to access to ITAR controlled items by nationals of a third country (to include dual nationals). These country specific arrangements are predicated on the issuance of a security clearance by the respective governments and grant covered individuals access to classified defense articles.

a. **Canada.** The State Department has concluded an arrangement with the Canadian Department of National Defence (DND), the Canadian Communications Security Establishment (CSE), the Canadian Space Agency (CSA), and the National Research Council Canada (NRC) with respect to access to ITAR controlled items by nationals of a third country (to include dual nationals). These agencies have agreed to restrict access to ITAR controlled items to their employees who are issued a minim SECRET-level security clearance by the Canadian Government. They further intend to ensure SECRET-level security clearances are not granted to personnel with ties to known terrorist groups or who maintain significant ties to foreign countries, including those countries to which exports and sales of ITAR controlled defense articles and services are prohibited. This arrangement applies only to the CSE, CSA, NRC, and DND and does not extend to private companies.

   (1) To request DN/TCN employees who qualify for this exemption, add the following language to § 124.7(a)(4)(c) of the agreement:

   > "Employees of (Select all applicable - the Canadian Department of National Defence (DND); Canadian Communications Security Establishment (CSE); the Canadian Space Agency (CSA); The National Research Council Canada (NRC)) who are nationals of a third country (including dual nationals) are authorized. The requirement to identify the nationalities of and have nationals of a third country (to include dual nationals) sign Non-Disclosure Agreements does not apply to personnel who hold a security clearance of Secret and above, which includes Canadian Forces members, civilian employees,

embedded contractors, and employees of other government departments working within the (Select all applicable - CDND, CSE, CSA or CNRC)."

b. **Australia.** The State Department has concluded an arrangement with the Australian Department of Defense (ADOD), with respect to access to ITAR controlled items by dual nationals. When an agreement includes the ADOD as a foreign licensee, or when the ADOD is identified as an end-user, the requirement for specific identification of nationals of a third country (to include dual nationals) and execution of Non-Disclosure Agreements is mitigated for those employees who hold an ADOD security clearance and who do not hold nationality of a country proscribed by § 126.1.

(1) To request DN/TCN employees who qualify for this exemption, add the following language to § 124.7(a)(4)(c) of the agreement:

"Employees of the foreign licensees/sublicensees who are nationals of a third country (including dual nationals) who hold an Australian Department of Defence (ADOD) security clearance and who do not hold nationality of a country proscribed by § 126.1 are authorized and exempted from the requirement to sign Non-Disclosure Agreements (NDAs). Employees who hold nationality of a country proscribed by § 126.1 are not authorized."

c. **The Netherlands.** The State Department has concluded an arrangement with the Netherlands Ministry of Defense (NMOD) with respect to access to ITAR controlled items by nationals of a third country (to include dual nationals). The requirement for specific identification of DN/TCNs and execution of Non-Disclosure Agreements is mitigated for those employees who hold a security clearance of Secret and above and who are members of the NMOD, civilian employees, embedded contractors or employees of other government departments working within the NMOD.

(1) To request DN/TCN employees who qualify for the Netherlands exemption, add the following language to § 124.7(a)(4)(c) of the agreement:

"Employees of the Netherlands Ministry of Defense (NMOD) who are nationals of a third country (including dual nationals) are authorized. The requirement to identify the nationalities of and have nationals of a third country (including dual nationals) sign Non-Disclosure Agreements (NDAs) does not apply to personnel who hold security clearances of Secret and above, which includes Netherlands Forces members, civilian employees, embedded contractors and employees of other government departments working within the NMOD."

11 – Contract Employees

Contract employees, such as Information Technology support personnel, are frequently hired through staffing agencies or other contract employee providers by both U.S. and foreign companies. This section of the guidelines only applies to "non-regular contract employees"; it does not apply to contract employees who meet the definition of "regular employee" found in § 120.64. All "regular employees" of companies authorized to receive defense articles and defense services are covered under that company's authorization, which must also include DN/TCN authorization if the "regular employees" are DNs or TCNs. If contract employees are "regular employees," their staffing agency or contract employee provider does not need to be identified in the agreement.

11.1 - U.S. Company Non-Regular Contract Employees

a. When a U.S. company (agreement applicant) hires U.S. or foreign non-regular contract employees through U.S. staffing agencies or other U.S. contract employee providers, there is no requirement for the U.S. staffing agency or other contract employee provider to be identified as a signatory to the agreement, so long as:

   (1) The employing party (agreement applicant) assumes full responsibility for the contract employees' actions with regard to transfer of ITAR controlled defense articles to include technical data, and defense services.

   (2) This applies regardless of whether these contract employees will have access to defense articles to include technical data, or will be involved in the provision of defense services to a foreign person under an approved agreement.

b. When a U.S. company (agreement applicant) hires foreign non-regular contract employees through a foreign staffing agency or contract employee provider, and those employees will have access to defense articles, to include technical data, and defense services, the foreign staffing agency or contract employee provider must be a signatory to the agreement. Since the foreign company is a signatory and thus responsible for its own employees' ITAR compliance, those employees will not be considered contract employees for the purposes of the agreement, and are not covered under the contract employee clause in section 11.3 below.

c. When a U.S. company (agreement signatory) hires a foreign contract employee through a U.S. staffing agency or U.S. contract employee provider, either the U.S. staffing agency/contract employee provider or the agreement signatory must obtain a Foreign Person Employment DSP-5 for that individual.

   (1) If the U.S. staffing agency or contract employee provider is not in the business of providing defense services independently of the contract entered into as relates to the specific agreement, then the U.S. company (agreement signatory) is responsible for obtaining the DSP-5 license for Foreign Person Employment.

(2) If the U.S. staffing agency or contract employee provider is registered with DDTC and is in the business of providing defense services beyond the specific agreement, then the staffing agency or contract employee provider is responsible for obtaining the DSP-5 license for Foreign Person Employment and must ensure the U.S. company (agreement signatory) is identified in Block 15 of the DSP-5.

d. When a U.S. company hires U.S. non-regular contract employees through foreign staffing agencies or contract employee providers, there is no requirement for the foreign staffing agency or other contract employee provider to be identified as a signatory or sublicensee to the agreement, so long as:

(1) The transfer of defense articles, to include technical data, is limited only to the specific U.S. person contract employees and NOT to the staffing agency or contract employee provider itself. Transfer of defense articles, to include technical data, or provision of defense services to the parent staffing agency or contract employee provider, either directly from the parties to the agreement or indirectly from the contract employees, IS NOT authorized.

(2) The foreign staffing agency or contract employee provider is not in the business of providing defense services independently of the contract entered into as related to the specific agreement.

(3) The employing party (U.S. company) assumes full responsibility for the employees' actions with regard to transfer of ITAR controlled defense articles to include technical data, and defense services.

11.2 – Foreign Company Non-Regular Contract Employees

a. When a foreign company (foreign licensee/foreign sublicensee) hires non-regular contract employees through foreign staffing agencies or other contract employee providers, there is no requirement for the foreign staffing agency or other contract employee provider to be identified as a signatory or sublicensee to the agreement, so long as:

   (1) The transfer of defense articles, to include technical data, and the provision of defense services are limited only to the specific contract employees and NOT to the staffing agency or contract employee provider itself. Transfer of defense articles to include technical data to the parent staffing agency or contract employee provider, either directly from the parties to the agreement, or indirectly from the contract employees, IS NOT authorized.

   (2) The foreign staffing agency or contract employee provider is not in the business of providing defense services independently of the contract entered into as relates to the specific agreement.

   (3) The employing party (foreign licensee/foreign sublicensee) assumes full responsibility for the employees' actions with regard to transfer of ITAR controlled defense articles, to include technical data, and defense services.

b. When a foreign company (foreign licensee/foreign sublicensee) hires a contract employee through a staffing agency or contract employee provider, and the contract employee is a dual or third country national, the applicant must obtain authorization from the Department of State prior to any transfer to the dual or third country national employee. ITAR § 126.18 is not applicable to non-regular contract employees, since the ITAR provides that the vetting method is available only when DN/TCNs are "bona fide regular employees." Contract employees who are also "regular employees" per § 120.64 may use the provisions of § 126.18.

11.3 – Agreement Language for Non-Regular Contract Employees

Any agreement request submitted to DTCL should recognize the existence of non-regular contract employees if they are employed by any signatory or sublicensee to the agreement. When non-regular contract employees do exist, include the following clause:

> "Contract employees to any party to the agreement hired through a staffing agency or other contract employee provider shall be treated as employees of the party, and that party is legally responsible for the employees' actions with regard to transfer of ITAR controlled defense articles to include technical data, and defense services. Transfers to the parent company by any contract employees are not authorized. The party to the agreement is further responsible for certifying that each employee is individually aware of their responsibility with regard to the proper handling of ITAR controlled defense articles, technical data, and defense services."

Additionally, add the above clause to any NDA executed by sublicensees when the sublicensee hires non-regular contract employees.

12 – Foreign End Users

For the purposes of an agreement, a foreign end user is the foreign party who will ultimately benefit from the transaction, such as the ultimate recipient/user of exported, reexported or retransferred defense articles/defense services.

12.1 – General Guidance on Foreign End Users

A foreign end user that requires access to technical data beyond basic operation data, maintenance data, or performance data must have a role in the agreement, either as a foreign signatory or as a foreign sublicensee. A foreign end user that will receive defense articles or defense services directly from a U.S. party to the agreement must be a signatory to the agreement.

12.2 – Documenting Non-Signatory Foreign End Users

Although not a party to the agreement, non-signatory end users are required to be documented on the DSP-5 vehicle as described in Section 3.2 and identified in the agreement as described in Sections 2.1 and 2.2.

a. When a commercial or private entity is identified as a non-signatory end user (such as the owner of a previously exported defense article under a service or repair agreement), a full address is required.

b. When a government is identified as a non-signatory end user (such as in a MLA or WDA), a full address is not required. However, a specific Department, Ministry, or other entity is to be identified as representing the government.

13 – Execution of an Agreement

In accordance with § 124.4(a), the applicant must submit one copy of the signed agreement or amendment to DTCL no later than 30 days after it enters into force. An agreement or amendment is not considered to be entered into force until such time as all parties to the agreement or amendment have signed it.

If a signed copy of a proposed agreement or amendment is submitted to DTCL for review, it is only considered entered into force as of the date of approval by DTCL. If provisos are issued as part of an approval directing modifications to the agreement/amendment prior to execution, the agreement/amendment must be re-signed by all parties prior to entering into force.

Special signature considerations are authorized under certain circumstances. These are detailed in Sections 13.1 and 16.

13.1 – Expedited Execution

In order to streamline the execution process for certain amendments in limited circumstances, DDTC will allow the applicant's signature to constitute execution of such an amendment. This process is referred to as **expedited execution**. The following restrictions and procedures apply:

a. Expedited execution is only allowable on an amendment whose **sole purpose** is to add or remove sublicensees from a previously approved territory, or to change the name, address, or role[9] of an existing sublicensee. The applicant may correct typos and other minor mistakes as part of the expedited execution request. Amendments that contemplate other changes, including, *inter alia*, the addition of sublicensees from new territories or the addition of the clause in 13.1.1 below, require execution by all parties.

b. If adding new sublicensees or modifying the name/address/role of existing sublicensees, the applicant must submit an electronic amendment containing all of the normally required elements (i.e., DSP-5 vehicle, transmittal letter, amendment to the agreement). The transmittal letter should state that the only change is the addition of sublicensees from a previously approved territory or name/address/role changes for existing sublicensees, and thus the applicant is seeking expedited execution.

c. If the amendment is approved, DTCL will issue the case with a modified preamble and a proviso directing the applicant to upload certification that all signatories have been notified of the amended agreement.

d. Subsequent amendment requests submitted to DTCL must include all sublicensees and correct names and addresses in the DSP-5 vehicle and the text of the amendment.

[9] The sublicensee must remain a sublicensee. Expedited execution will not be authorized if converting a sublicensee into a signatory. Such a change will require all signatories to sign the amendment.

e. **Removal of Sublicensees:** If the **sole purpose** of an amendment is the ***removal*** of sublicensees (i.e., no sublicensees are being added or modified), DTCL approval is not required. The change may be accomplished via minor amendment and expedited execution exercised so long as the Expedited Execution clause was previously included in the executed agreement (see Section 13.1.1 below) and no other changes are contemplated. In such cases, the applicant must provide a copy of the signed amendment to all other signatories and upload certification that all signatories have been notified of the amended agreement. The certification must be uploaded within 30 days from the date that all signatories have been notified of the amendment and should be submitted to DDTC along with the signed amendment. See Section 4.3 for guidance on submitting copies of executed minor amendments.

13.1.1. Expedited Execution Clause

a. In order to inform all foreign licensees of the expedited execution process, the following clause is required in all agreements/amendments that wish to use the expedited execution process. This clause should be located in the sublicensing paragraph of Section 124.7(a)(4) of the agreement.

> "Amendments solely to add sublicensees, change the names or addresses of existing sublicensees, change sublicensee roles, or remove sublicensees may be approved and take effect without requiring signatures of all parties. The following restrictions apply to such amendments:
>
> a. New sublicensees and addresses must be from previously approved territories;
> b. All new sublicensees and sublicensee name or address changes must be approved by DDTC;
> c. After DDTC approval, the agreement holder must sign the amendment, which constitutes execution for the purposes of such an amendment;
> d. Before transfers may be made to the new sublicensees:
> (1) The agreement holder must notify all other signatories of the change by providing them with a copy of the approved, signed amendment; and
> (2) Sublicensees are required to execute a Non-Disclosure Agreement (NDA)."
> e. If a sublicensee is removed, the agreement holder will provide a copy of the signed amendment to all other signatories and all transfers to that sublicensee must immediately cease.

b. There is no "grandfathering" of the expedited execution process: the above clause must be included in the executed agreement before its provisions can be used. However, if an agreement does not contain the required clause, it may be added via the minor amendment process. The required clause may also be included in any new agreement/amendment submissions.

14 – Proviso Reconsideration

If the applicant feels one or more provisos imposed by DTCL in an approval to an agreement are too restrictive, the applicant may submit a "Proviso Reconsideration" to ask the U.S. government for relief or rewording of the proviso(s). This process, which will be accomplished via the DSP-5 vehicle for previously approved electronic agreements, can also serve for "Clarification of a Proviso" if the applicant is unclear on the restrictions of a particular proviso and wants more insight or to ask a specific question related to the proviso. If the proviso appears to contain an administrative typo or omission, contact the approving analyst or division chief prior to submitting a proviso reconsideration.

14.1 – General Guidance on Proviso Reconsiderations

a. Proviso reconsiderations are used to request reconsideration by the Department of State based on the scope previously identified in the proposed agreement/amendment request. It does not afford the applicant an opportunity to introduce new, or modify previously submitted, information as a means to justify the revision of the issued proviso. New or modified information must be submitted as a proposed amendment to the agreement.

b. When a request for proviso reconsideration for previously approved electronic agreements is submitted, DTCL will record the submission as a major amendment to the affected agreement to maintain accountability of that case. As a result, the request MUST be submitted electronically via the DSP-5 vehicle.

c. A proviso reconsideration may be submitted as a stand-alone request or as part of an amendment to an agreement that also requests other modifications.

d. There is no limit to the number of provisos the applicant may inquire about in a single submission.

14.2 – Elements of a Proviso Reconsideration Request

When submitting a request, provide the following:

a. A request for reconsideration of the proviso via the DSP-5 vehicle. Block 20 of the form should identify "Proviso Reconsideration" as the purpose of the submission. Block 20 should also restate what was previously in the purpose block, i.e. a concise narrative describing the overall purpose of the agreement. The remainder of the DSP-5 vehicle should include all information required as if submitting an amendment to the electronic agreement.

b. A copy of the DTCL approved license with the relevant proviso(s).

c. A general correspondence type letter requesting the proviso reconsideration. This letter must:

   (1) Provide the original wording of the proviso(s) as issued in the DTCL approval.

   (2) Provide a recommendation on how the proviso should be revised or a recommendation to delete the proviso.

   (3) Describe the problem with the original proviso (i.e., it is "too restrictive," "in error," or "not applicable") and provide justification to support the change or deletion of the proviso.

d. A § 124.12 transmittal letter (or § 124.14(e) transmittal letter for WDAs) is not required unless the proviso reconsideration is being submitted as part of an amendment.

14.3 – Template Request for Proviso Reconsideration

(Date)

Director
Office of Defense Trade Controls Licensing
2401 E Street N.W., Suite 1200 (SA-1)
Washington, D.C. 20522-0112

Subject: Request for reconsideration of proviso(s) (proviso numbers) to TA (or MA/DA) xxxx-xx (050xxxxxx) approved license dated (month/day/year) related to (commodity in DTC license)

Reference: DTCL Case (original case number; any precedent cases directly related)

Dear Director:

Submitted herewith is a submission package for proposed reconsideration of proviso (s) (proviso numbers) to TA (or MA/DA) 050xxxxxx license dated (mm/dd/yr) between (U.S. company(ies)) and (foreign licensees with country) related to (commodity on DTC license)

(Applicant) is asking for reconsideration of provisos (list each proviso) from the DTCL approved license (state agreement or amendment number) dated (date). Address provisos one at a time.

Current Wording: (State the proviso verbatim from the approval)

Recommendation: (delete or revise as follows)

Justification: (provide a description of the problem with justification for change)

If you require additional information, please contact (list point of contact) at telephone number (area code and number) and email (email address).

Sincerely,

Signature block

15 – Exporting Hardware in Furtherance of Agreements

Hardware exported in furtherance of (IFO) an agreement – The export by the agreement holder or another U.S. signatory to the agreement of defense articles identified within the scope of the agreement. This type of export must be included in the scope of the agreement and the value of the export will be counted against the value of hardware exports authorized under the agreement unless the export is for repair and replacement.

Hardware exported in support of (ISO) an agreement – The export by any U.S. party of defense articles which indirectly relates to the agreement. The "in support" statement acts, in part, to frame the purpose/end-use of the articles being exported so the license adjudicators better understand the overall effort. This type of export does not need to be reflected in the scope of the agreement and the value of the export will not be counted against the value of hardware exports authorized under the agreement. In most circumstances, an "in support" license should not list the agreement holder or other U.S. signatories of the agreement as the source or manufacturer of the defense article being exported.

15.1 – Hardware via Separate IFO Licenses

a. When shipment of hardware "in furtherance" of an agreement via separate license (DSP-5, DSP-61, DSP-73, DSP-85) is anticipated, the hardware must be identified (described) in the proposed agreement under the § 124.7(a)(1) section of TAAs and MLAs (§ 124.14(b)(1) section of WDAs) and by value in the valuation table of the Transmittal Letter (TAAs and MLAs only). The more details provided in the agreement on the hardware, the quicker the review process for the IFO license.[10]

b. If exports are approved, DTCL will issue a proviso limiting the total value of hardware that may be exported IFO the agreement. This value should match the "Total Licensed Hardware" value (Line 6) of the valuation table. If they do not match, contact the issuing analyst.

c. The agreement/amendment authorizing the subject hardware must be approved by DTCL prior to submission of the hardware license request. The hardware license request may be submitted prior to the agreement being fully executed. License requests prematurely submitted may be returned without action.

[10] In cases where the hardware is adequately described in the text of the agreement and where hardware value remains to support the proposed export, the license request will normally not require any additional staffing.

15.1.1 Requirements for Licenses IFO Agreement Submissions

a. The license request must be submitted by the agreement holder or another U.S. signatory to the identified agreement. Non-U.S. signatories such as trading companies CANNOT submit an "in furtherance of" license request.

b. The end-user identified on the license request must be a foreign licensee (signatory) or end-user on the subject agreement.

c. The first foreign consignee (not including foreign intermediate consignees) to receive the subject hardware must be a foreign licensee (signatory) or end-user on the subject agreement. Subsequent recipients of hardware listed in the foreign consignee and foreign end-user blocks must be approved parties to the agreement.

d. For Customs purposes, the license must identify the specific foreign address where the defense articles will initially be received, or multiple potential foreign addresses if that is unknown when the license is submitted. IFO licenses may list different address(es) other than the address listed in the body of the agreement if the legal entity is the same, the country is the same, and the agreement uses the phrase "(and all locations in [identify the country])."

   (1) Once the defense articles are received by the first foreign party, the agreement is the authorization that allows for transfers of the defense articles between multiple locations, including to other licensees or sublicensees to the agreement, or to multiple locations of the same legal entity (licensee or sublicensee). Thus, all addresses which may receive defense articles for private entities who are signatories or sublicensees must be listed in the agreement or the agreement must include the primary business location where activity will occur along with the phrase "(and all locations in [identify the country])."

   (2) For the permanent export of SME, all foreign licensees, sublicensees, and end-users who are anticipated to receive SME under an IFO license must be listed on the license. This ensures compliance with DSP-83 signature requirements.

   (3) If an additional party will receive the SME after it had been permanently exported, the IFO license would not need to be modified, but a DSP-83 signed by that additional party is required. If the additional party is not already a foreign licensee, sublicensee, or end-user of the agreement, the agreement will need to be amended to include the party prior to the transfer. A DSP-83 signed by the additional party must be uploaded to the respective IFO license and the agreement prior to the transfer.

   (4) For governmental entities who are signatories or sublicensees, only one address is required in the body of the agreement. IFO licenses may list different address(es) than the address listed in the body of the agreement.

   (5) Since the agreement provides authorization to transfer defense articles to other locations approved under the agreement, the IFO license does not need to be modified when the defense articles will be shipped after initial receipt by a foreign recipient approved on the license, to other parties/locations approved under the agreement.

e. The purpose block of the license request must include the words "In Furtherance of TA/MA/DA/AG 050xxxxxx (TA/MA/DA-xxxx-xx)" on the very first line.

f. Submit the following support documentation with the license request:

(1) Purchase Order, Letter of Intent, Contract, or Request for Goods from the foreign party to the agreement applicant or U.S. Signatory to the agreement who is requesting the license. The dollar value of defense articles does not need to be provided.

Note: When seeking authorization to export items "subject to the EAR" (see § 120.58 and § 123.1(b)) on a Department of State license or other approval, the U.S. exporter must provide purchase documentation or other support documentation showing both defense articles described on the U.S. Munitions List and items on the Commerce Control List. Submit the appropriate EAR classification information for each item exported pursuant to a U.S. Munitions List "(x)" paragraph. This includes the appropriate ECCN or EAR99 designation. Identifying the ECCN or EAR99 designation on the license itself is not required.

(2) A DSP-83 (if exporting SME). The DSP-83 submitted with a DSP-5 license request must specifically identify the defense articles and/or technical data per the instructions for Block 5. **DSP-83s are required to accompany a DSP-5 license request for SME.**

(3) Letter of Explanation from the Holder of the Agreement, signed by an empowered official. The information in this letter is requested pursuant to § 122.5. A template can be found on the DDTC website. If the value of the IFO license exceeds a Congressional Notification threshold, include a statement that identifies the CN number, the date, and the agreement/amendment number under which it was notified.

(4) For a WDA IFO license which exceeds the Congressional Notification threshold, a Letter of Intent and Executive Summary are required to support the Congressional Notification process.

g. For IFO licenses where hardware has transitioned to the jurisdiction of the Department of Commerce, the following procedures and restrictions apply:

(1) For agreements containing paragraph (x) hardware, IFO licenses may include paragraph (x), if desired. If the agreement has not yet been amended but is still valid and contains commodities that are subject to the CCL, IFO licenses may also include paragraph (x) commodities, if desired.

(2) IFO licenses containing exclusively paragraph (x) commodities are not permissible.

(3) IFO license values must include the value of paragraph (x) items, if the IFO license includes such items. However, the value of paragraph (x) items will not be counted against the value of the agreement.

15.2 – Repair and Replacement Hardware

When an applicant is required to either repair or replace a defense article previously authorized for export the applicant can:

(1) Utilize § 123.4(a)(1) exemption for the repair and replacement;[11] or

(2) Apply for a separate license for repair and replacement purposes.

15.2.1 Acquiring a separate license for repair and replacement.

a. Reference the relevant agreement under which the hardware was originally exported in Block 23 of the DSP-73, Block 23 of the DSP-61, or Block 21 of the DSP-85 and clearly state the request is for "repair and replacement" purposes.

b. The letter of explanation referenced in Section 15.1.1.f.3 is not required for "repair and replacement" license requests.

c. The value of repair and replacement licenses will not be counted against the value of approved hardware authorized under the agreement.

[11] The § 123.4(a)(1) exemption is available for temporary imports and subsequent exports of unclassified U.S.-origin defense items (including any items manufactured abroad pursuant to U.S. Government approval).

15.3 – Decrementing Hardware Value Authorized in Agreements

The value of hardware exported in furtherance of an agreement cannot exceed the value authorized by proviso in the DTCL approval.

a. For Permanent Hardware Exports via DSP-5s, DSP-85s, or § 123.16(b)(1) (when authorized) the hardware value authorized under the agreement is permanently decremented with each export. If additional hardware value is required, the applicant must submit a proposed amendment to the agreement to increase the value of hardware authorized for export.

b. For temporary exports via DSP-73s or DSP-85s, or temporary imports via DSP-61s or DSP-85s, the hardware value authorized under the agreement is decremented with each export only as long as the license authorizing the temporary export or import is active.

   (1) The intent of the approved value for temporary exports and imports in furtherance of an agreement is to maintain visibility of and to identify the maximum value of hardware temporarily exported or imported.

   (2) The value for temporary exports and imports indicates the maximum value authorized for export or import on a temporary basis at any given time. Hence, if an agreement authorizes the temporary export of hardware valued at $100,000, the applicant may request DSP-73s for up to $100,000. Once those DSP-73s are closed (re-import complete), the applicant can apply for an additional DSP-73 valued up to $100,000. However, at no time can active DSP-73 licenses exceed $100,000.

   (3) Temporary exports or imports for repair and replacement are not decremented from the hardware value authorized for the agreement.

   (4) It is the responsibility of the applicant to notify DTCL of any previously authorized licenses when applying for a license for temporary export or import of hardware. The applicant must certify the status of temporary exports and imports to include value remaining when requesting additional temporary export or import licenses.

16 – Incremental Signing

Under certain conditions, DDTC may allow an agreement to enter into force before all parties have signed the agreement. This exception to § 124.4(a), termed "incremental signing," permits the applicant to execute transfers to foreign signatories as they sign, rather than wait until all parties have concluded the agreement. As a result, transfers may take place between the U.S. person(s) and a foreign party as soon as that foreign person signs the agreement. Furthermore, any approved foreign party identified on an original agreement or subsequently approved amendment may sign at any time without further DTCL approval.

DDTC currently allows incremental signing for two types of agreements: arbitration-related TAAs and Space Insurance TAAs.

Parties to an incrementally signed agreement are divided into two separate categories of signatories: Major Parties and Minor Parties.

Upon obtaining each new signature of a previously authorized party, within 30 days the applicant must provide DTCL an electronic copy of the signature page plus a cover letter identifying all of the current signatories. The applicant must upload this electronic copy of the signature page to the respective agreement.

16.1 – Arbitration-Related Agreements

Arbitration-related TAAs permit applicants to provide and discuss technical data and furnish defense services to foreign parties as required to conduct the Pre-Hearing, Hearing, and Post-Hearing Phases of an arbitration proceeding. The proceeding may be in response to legal claims or anomalous events related to a failed launch, aircraft malfunction, satellite anomaly, or other event involving a USML defense article.

16.1.1. Parties to Arbitration-Related Agreements

16.1.1.1. Major Parties. These parties, which may or may not have contracted with sublicensees, include the following entities:

(1) The applicant

(2) U.S. signatories and foreign licensees who cannot be classified as an "expert witnesses" (e.g., litigants, claimants, counsels, private court/panel, etc.).

(3) U.S. and foreign consultants and law firms. U.S. and foreign consultants and law firms, while considered Major Parties, do not qualify as sublicensees but are authorized to sign incrementally as well (see Table 16.1 below). This exception is not applicable to all other persons composing the Major Party category.

While required to be referenced in the agreement, international or government courts need not be signatories to an agreement. However, private courts must be listed as Major Parties and are required to sign the agreement as well as each applicable amendment thereafter.

For private courts, members need not be identified by name; however, nationalities must be noted. Non-disclosure agreement rules apply.

16.1.1.2. Minor Parties. These are expert witnesses, including U.S. or foreign technical and factual experts. Foreign witnesses are not required to sign the agreement or its subsequent amendments. U.S. witnesses, on the other hand must sign.[12]

16.1.2. Arbitration-Related Submissions

a. Given the significant distinctions among the various parties to an arbitration effort, as well as the varying applicability of rules to persons within these categories, supplemental documents for arbitration-related TAA's should be arranged as follows:
   (1) Attachment A – Technical Data /Defense Services
   (2) Attachment B – List of Consultants and Law Firms
   (3) Attachment C – Foreign Expert Witnesses (Sublicensees)
   (4) Attachment D – U.S. Expert Witnesses
   (5) Attachment E – Other Sublicensees
   (6) Attachment F, etc. – Miscellaneous items

b. Descriptions of Parties listed in these attachments must include the following:
   (1) Name
   (2) Country
   (3) Full address
   (4) Role specifics, if warranted

16.1.3. General Guidance For Arbitration Related Agreements

Category	Signature Status	DSP-5 Vehicle Entry
a. Major Parties		
Applicant (or U.S. Subsidiary)	Must sign	Block 21
U.S. Signatories	Must sign	Block 21
Foreign Licensees	Must sign	Block 14
U.S. Consultants/Law Firms	Sign incrementally	Block 21
Foreign Consultants/Law Firms	Sign incrementally	Block 16
Sublicensees	No signature (sign NDAs)	Block 16
b. Minor Parties		
U.S. Expert Witnesses	Sign incrementally	Block 21

[12] U.S. witnesses and legal representatives who are not in the business of manufacturing or exporting defense articles or furnishing defense services are not required to register with DDTC in accordance with § 122.1.

Foreign Expert Witnesses	No signature (sign NDAs)	Block 16

Table 16.1 Signature Guidance by Party

a. Technical data exchanges between or among the foreign expert witnesses is prohibited.

b. U.S. signatories may have direct contact with the foreign witnesses.

c. Only amendments which change the scope of the effort or modify (i.e., add or delete) Major Parties must be signed by all currently-signed parties. Former parties, whose participation in the effort has been terminated, are not required to sign.

d. Amendments that only add or change the name or address of a foreign person or a U.S. expert witness need only be signed by all Major Parties (excluding consultants and law firms) and that subject foreign person.

16.2 – Space Insurance Agreements

Space Insurance TAAs allow for the provision of technical data/defense services for the purposes of securing satellite or launch insurance permits, or conducting meetings with customers regarding insurance concerns on previous and/or potential anomalies that have occurred or could significantly impact product lines. This type of agreement allows applicants to transfer technical data, provide direct answers to technical questions, and discuss with insurers what they can expect regarding system performance during the life of a satellite or during the operation of a launch vehicle.

16.2.1. Parties to Space Insurance Agreements

a. **Major Parties –** Major Parties are comprised of the applicant and any U.S. signatories or foreign licensees who do not qualify as insurance providers. Examples of Major Parties include launch providers, manufacturers and their subcontractors, and purchasers and their subcontractors.

b. **Minor Parties –** These are limited to underwriters, insurance brokers, and their consultants.

16.2.2. Space Insurance Submissions

a. Given the significant distinctions among the various parties of a space-related insurance TAA, the supplemental documents for these agreements should be arranged as follows:
   (1) Attachment A – Technical Data/Defense Services
   (2) Attachment B – Statement of Work
   (3) Attachment C – Insurance Providers

b. Descriptions of Parties listed in these attachments must include the following:
   (1) Name
   (2) Country
   (3) Full address
   (4) Role specifics, if warranted

16.2.3. General Guidance For Space Insurance Agreements

Category	Signature Status	DSP-5 Vehicle Entry
a. Major Parties		
Applicant (or U.S. Subsidiary)	Must sign	Block 21
U.S. Signatories	Must sign	Block 21
Foreign Licensees	Must sign	Block 14
Sublicensees	No signature (sign NDAs)	Block 16
b. Minor Parties		
Underwriters	Sign incrementally	Block 16/Block 21
Insurance Brokers	Sign incrementally	Block 16/Block 21
Consultants	Sign incrementally	Block 16/Block 21

Table 16.2 Signature Guidance by Party

a. Defense services (e.g., technical data and/or technical assistance interchange) between or among the insurance providers (except as specifically authorized in the agreement) is prohibited.

b. Only amendments which change the scope of the effort or modify (i.e., add or delete) Major Parties must be signed by all currently-signed parties. Former parties, whose participation in the effort has been terminated, are not required to sign.

c. Amendments that only add or change the name or address of a foreign person need only be signed by all Major Parties and that subject foreign person.

17 – Support to Foreign Deployed Forces

a. The armed forces of a foreign country or the armed forces of an international organization may take defense articles and related technical data on operations or deployment outside a previously approved country without requesting additional authorization from DTCL. However, any other foreign or U.S. party to an agreement must not conduct transfers of defense articles, technical data, or defense services to those foreign armed forces in a country of operation or deployment without the prior approval of DTCL. Prior approval can be gained by including specific additional transfer territories in the agreement and associated DSP-5 vehicle.

b. In cases where the foreign armed forces in question are a signatory to an agreement, prior approval may be gained through the following statement made in Section 124.7(a)(4) of the agreement:

> "When the armed forces of [identify the foreign country or international organization] transfer defense articles outside the countries listed elsewhere in this agreement on operations or deployments in support of a U.S. or UN mission, all other Foreign or U.S. parties may transfer defense articles, technical data or defense services to the country of operation or deployment, provided such country is not proscribed by 22 CFR 126.1 or the subject of a U.S. or UN arms embargo."

If this clause is used, specific additional transfer territories are not required to be identified in the DSP-5 vehicle.

c. Transfers to approved DN/TCN employees are authorized to continue when the armed forces of a country or the armed forces of an international organization are on operations or deployment outside a previously approved country. However, transfers to employees of the country in which the forces/elements are deployed is not authorized without prior approval by the Department of State.

18 – Non-Signatory Space Launch Service Providers

This Section applies to an agreement contemplating the permanent export of defense articles that will potentially be launched into space by a Space Launch Provider who is not a signatory to the agreement.

18.1 – General Guidance on Non-Signatory Space Launch Service Providers

a. If the agreement is for procurement of space-related defense articles and all defense articles will return to the U.S., the agreement does not need to specify launch service providers. If the launch of the defense articles which will return to the U.S. will take place by a foreign launch service provider, a separate authorization would be needed to cover the transfers to the foreign launch territory.

b. If additional launch service providers are identified after the agreement is submitted or approved, the agreement must be amended to gain approval for known or potential launch by a different launch service provider. The amendment must be approved and executed before defense articles are launched into space.

c. If launch service providers are not identified when the agreement was submitted, the agreement must be amended to gain approval for launch. The amendment must be approved and executed before the defense articles are launched into space.

18.1.1 – Identifying LSPs in the Agreement

a. In the agreement, identify the known or potential launch service providers in a WHEREAS clause. Provide the following information for each LSP:
   (1) Its respective space launch vehicle(s)
   (2) The potential countries and sites of launch

b. Add the following sentence to the transfer territory statement: "Known or potential territories for launch services are (list countries)."

18.1.2 – Identifying LSPs and Launch Locations on the DSP-5 Vehicle

a. Known or potential launch service providers should be identified in the DSP-5 vehicle as described in Section 3.2:
   (1) **Block 14** (for foreign providers); or
   (2) **Block 21** (for U.S. providers)

b. If the Foreign launch territory is different from that of the LSP provide, list the foreign launch territories in Block 14 of the DSP-5 vehicle as described in Section 3.2.

Part 3 Exceptional Cases and Exemptions

19 – Limited Defense Services

In **exceptional cases** involving activities of limited scope and duration, DTCL will consider approving the provision of limited defense services under a DSP-5 license in accordance with § 124.1(a). An application for a limited defense services license must be submitted via DSP-5 and include a signed letter requesting limited defense services that includes justification for the request. Additionally, applicants must note the § 124.1(a) request for limited defense services in block 20 of the DSP-5. DTCL will ultimately decide if the situation warrants approval via a DSP-5 license rather than an agreement.

Examples of Limited Defense Services Which May be Considered Under a DSP-5 License Pursuant to § 124.1(a)

- Short-term training
- Limited duration/low technology installation work
- Limited duration/low technology repair
- Activities supporting a U.S. government contract (including subcontractor flow down) when the U.S. party does not have any contractual relationship with the foreign party
- Space-Related Insurance Activities, unless SME technical data will be transferred

20 – Agreements Utilizing the § 123.16(b)(1) Exemption

§ 123.16(b)(1) provides an exemption for the permanent export of unclassified hardware without an export license (i.e., DSP-5). The use of § 123.16(b)(1) must be specifically requested in the proposed agreement and the agreement must cite the hardware that will be transferred under the exemption.

AES Filing. If all the conditions for this exemption are met, and DTCL approves the request to utilize § 123.16(b)(1), the exporter must file with AES certifying that the export is exempt from the licensing requirements of the ITAR by including the statement "§ 123.16(b)(1) and TAA/MLA/WDA (identify agreement number) applicable." Upload a copy of each AES record to the DSP-5 vehicle associated with the agreement/amendment.

20.1. – Valuation Table for Agreements Utilizing the § 123.16(b)(1) Exemption

The Valuation Table should specify the value of transfers using this exemption. Note: if the Congressional Notification threshold for the agreement is exceeded, § 123.16(b)(1) **cannot** be used.

Line Number	Item	Value
1	**Technical Data and Defense Services**	**$1,000,000**
	Hardware	
2	Permanent Export by DSP-5 or DSP-85 (Tooling/Support Equipment)	$2,000,000
2a	Permanent Export by § 123.16(b)(1) (Tooling/Support Equipment)	$4,000,000
3	Permanent Export by DSP-5 or DSP-85 (Kits and Components incorporated into manufactured items) (**MLA only**)	$8,000,000
3a	Permanent Export by § 123.16(b)(1) (Kits and Components incorporated into manufactured items) (**MLA only**)	$5,000,000
4	Temporary Export by DSP-73 or DSP-85	$1,000,000
5	Temporary Import by DSP-61 or DSP-85	$3,000,000
6	**Total Licensed Hardware (Sum of lines 2, 3, 4 & 5)**	**$14,000,000**
7	Hardware Value for Congressional Notification (lines 2 and 2a)	$6,000,000
8	Hardware Manufactured Abroad (Lines 3 and 3a, plus work done by foreign licensees as result of the MLA) **(MLA Only)**	$20,000,000
9	**AGREEMENT TOTAL VALUE (Sum of lines 1, 6 & 8)**	**$35,000,000**
10	Congressional Notification Value (Sum of lines 1, 7 & 8)	$27,000,000

Table 20.1 Valuation for Usage of § 123.16(b)(1)

Acronyms

AECA	Arms Export Control Act
AG	Agreement
CFR	Code of Federal Regulations
CN	Congressional Notification
DDTC	Directorate of Defense Trade Controls
DoD	Department of Defense
DN	Dual National
DCSA	Defense Counterintelligence and Security Agency
DTCC	Defense Trade Controls Compliance
DTCL	Defense Trade Controls Licensing
DTCP	Defense Trade Controls Policy
DTSA	Defense Technology Security Administration
EO	Empowered Official
EU	European Union
FMS	Foreign Military Sales
FRN	*Federal Register* Notice
GC	General Correspondence
IFO	In Furtherance of
ISO	In Support of
ITAR	International Traffic In Arms Regulations
LSP	Launch Service Provider
LO	Licensing Officer
MDE	Major Defense Equipment
MLA	Manufacturing License Agreement
MTEC	Missile Technology Export Control Group
MTCR	Missile Technology Control Regime
NATO	North Atlantic Treaty Organization
NDA	Non-Disclosure Agreement
NISPOM	National Industrial Security Program Operating Manual
RWA	Return Without Action
SME	Significant Military Equipment
TAA	Technical Assistance Agreement
TCP	Technology Control Plan
TCN	Third-Country National
TTCP	Technology Transfer Control Plan
USG	United States government
USML	United States Munitions List
USOP	United States Operations
WDA	Warehouse and Distribution Agreement