

## **TECHNICAL ASSISTANCE AGREEMENT (TAA)**

The following points are intended to provide an understanding of a Technical Assistance Agreement (TAA) defined by the International Traffic in Arms Regulations (ITAR). Of course, these points do not replace the regulations defined by the ITAR. The ITAR is controlled and executed by Defense Trade Controls (DTC) which is a directorate under the State Department.

- A Technical Assistance Agreement (TAA) is essentially an agreed to “rule book” that governs how and what technical information will be discussed, presented, and/or conveyed by any means to a foreign national.
- A good rule of thumb is that if the information (what DTC calls “data”) to be discussed is outside commercial marketing and/or would be considered proprietary than it needs to be controlled by a TAA.
- TAA’s are between companies or organizations that will engage in providing direct interface with the foreign nationals. If there are subs or vendors that will NEVER interact with the foreign nationals they do not have to be on the TAA. Generally, consultants are employed by a company and fall under the companies TAA.
- It is the responsibility of the company to inform employees, sub-contractors, and consultants – especially those coming in contact with foreign nationals – of the ITAR regulations associated with foreign nationals.
- Deliveries (hardware, software, documents, disks, etc.) in association with a TAA may require a separate license – such as a DSP-5 license for permanent export. The value of the delivery items must be included in the total value associated with the TAA.
- TAAs can be amended if the content of the agreement, participants, delivered items, value, time period, etc. must change. The typical amendment cycle time is 2-3 months depending on the content of the change and if DTC staffs the TAA for review.
- DTC can make three choices regarding their review: Approval, Denial, or Return Without Action (RWA). Of course if a denial or RWA is received we can resubmit the TAA to correct issues.
- Count on a minimum of 2 months for TAA approval once it is submitted to DTC. The DTC website shows the processing times in days from receipt to approval but they are deceiving since they are work days and also do not reflect the time it takes DTC to log the agreement in the system or provide the actual approved TAA letter.

- Important – you can not share information with the foreign national until the TAA is executed. This means that DTC has approved the TAA, all parties have signed the TAA, and a copy of the signed TAA is in DTC’s possession. You can work before the TAA is approved but you just can not deliver any information or equipment. Basically, you are working at true risk – if the TAA is denied the end user gets nothing.
- Section 120 of the ITAR gives the definitions for items like technical data, a US person, a foreign person, an export, etc. One important point is that a US person working for a foreign employer must be considered a foreign person. Remember that the TAA is between companies and organizations and not individuals. It can get gray at times but it is always better to be safe than sorry.
- Excelerate can not guarantee approval of your TAA. We will use our experience to prepare the proper documentation based on the facts you provide. Our quotation includes up to two re-submittals of the TAA application if an RWA or denial is received. After the third attempt the final payment to Excelerate is required in full.

## **THE PROCESS**

Below is the basic process for preparing a TAA. Additions to this process can occur for such item as the requirement for a DSP-83: Non-Transfer and Use Certificate, if classified information will be conveyed, if there are many participants, registration of the company,...

1. If not registered then register the company with DTC.
2. Obtain the necessary TAA information.
3. Prepare the TAA and provide for your review.
4. Once satisfied, the TAA goes out for full review to all participants.
5. The Letter of Transmittal is prepared and provided for review.
6. Collect comments as they are received and update the TAA.
7. Send final copy out for review.
8. Prepare 1 original and 7 copies of the necessary documentation and courier to DTC.
9. Monitor Elle Net for progress of TAA through system (very limited).
10. Respond to DTC inquiries.

11. Receive the TAA decision. Fix and resubmit if RWA or denial.
12. Upon approval send TAA out for signature by all parties.
13. Execute TAA with DTC once signatures are obtained.

### **TAA REQUIRED INFORMATION CHECKLIST**

Here is the checklist of information that we will need to prepare the TAA documentation. Let us know if you have any questions. Remember that the ultimate end user may be the government of the foreign company you are working with.

1. Is your company registered with Defense Trade Controls? Registration Number: \_\_\_\_\_
2. Provide a brief background description on the purpose of the agreement and how it will be executed by the parties involved. This should be no longer than a page, preferably in bullet format for easier review and reference. Include such things as:
  - General scope of the effort to include defense articles and defense services being provided.
  - Description of the roles each party plays and state who the end-users are.
  - Any history that may better explain why this agreement is required.
  - A short review of the commodity or program as necessary.
  - Any known precedent – previous agreement or license for instance – of export that may pertain to this agreement.
  - Information on the type of technology or data that will be transferred and how it will be transferred.
3. Provide concise summary of program to be done under the agreement. This summary can be drawn from the Statement of Work. The Statement of Work can be a separate document attached to the TAA and incorporated by reference within the agreement. Item #2 gives information on the background as well as the work involved where this relates specifically to the work and deliveries being done under that agreement.
4. If available and appropriate, provide any supporting brochures, pamphlets, descriptions, data, etc. that may help DTC understand what is going to occur in association with the TAA. They do not need the drawing and specs of the screws but more system level information or

a more detailed description of what is going to occur. Again, this information is helpful but not required.

5. Will any information related to manufacturing be associated with this agreement? If so, then additional statements and information will need to be included and the TAA will change to a Manufacturing License Agreement (MLA).
6. Is US classified data or equipment be associated with the TAA? If yes, then let us know and we will ask a few more questions for use in the TAA.
7. Are there any US patents on file in association with the agreement? If so, list the patent numbers.
8. If applicable, identify any relevant US contracts under which the technical data or equipment is associated. Usually this is for TAA's associated with US government contracts. If commercial than there are no contracts associated with the TAA.
9. An estimated value of the agreement is required for the TAA. Take this seriously because the TAA and any export licenses, such as a DSP-5, that are applied for in association with this agreement will be correlated with the values in the TAA. For instance, if you indicate in the TAA that your widget will cost \$1,000 and your DSP-5 application indicates \$2,000 it will not be approved without an amendment to the TAA (an extra 2 months minimum). An example of the cost information breakdown associated with the TAA is provided as follows:

<b>Technical Data</b>	<b>\$100,000</b>
<b>Defense Services</b>	<b>\$500,000</b>
<b>Hardware</b>	
Permanent Export by DSP-5 or by 123.16(b)(1) Exemption	\$500,000
Temporary Export by DSP-73	\$200,000
Temporary Import by DSP-61	<u>\$100,000</u>
<b>Total Licensed Hardware</b>	<b>\$800,000</b>
<b>Hardware Manufactured Abroad (MLA only)</b>	<b>\$1,500,000</b>
<b>AGREEMENT TOTAL VALUE</b>	<b>\$2,900,000</b>

<b>Other Values of Interest to DTCL</b>	
Permanently Imported Hardware Procured Abroad <b>(TAA only)</b>	\$500,000
Non-ITAR Hardware for Export	\$100,000
Repair or Replacement Export	\$900,000

What you will want to do is have the total estimated value of your TAA be at or slightly higher than your contracted value. The ITAR rule is the actual value of goods sold can not exceed the value of a license or TAA by more than 10%. The rule that customs seems to follow is that you can never exceed the value so the best rule of thumb is to estimate a little higher than lower. There is no penalty for being too low but it would be unreasonable. If you are having difficulty coming to a final TAA value then let us know and we can provide additional guidelines.

10. Ultimate End User Information: Name and Address
11. All Foreign parties associated with TAA: Name and Address
12. All US parties associated with the TAA: Name and Address
13. Are there any subcontractors that will be involved in the TAA activity that will need to have direct contact with foreign parties? This situation is known as sub-licensing by DTC and they will need to be included in the TAA. Please provide the name and address of all sub-licensed sub-contractors.

For example, you are providing training to a foreign party with sub-contractor "A" doing some of the training and the other sub-contractor "B" providing print services. "A" would need to be included on the TAA and "B" would not.

14. There are additional statements and signatures required if the value of the TAA paid to a foreign company exceeds \$500,000 or congressional notification is required, but no need to worry about that unless it is your situation.
15. Are Foreign Military Credits being used in association with this agreement? Typically no but if yes then we will be asking for more information from you.



Technical Assistance Agreement (TAA)

[www.ITARHelp.com](http://www.ITARHelp.com)

[www.Excelerate-Inc.com](http://www.Excelerate-Inc.com)

After receiving the information, Excelerate will first generate the TAA for your review then the transmittal letter with the full process defined above being executed as the process continues to the end.