Georgetown University (the “University”), as a Catholic and Jesuit student-centered, global research university, is committed to creating and communicating knowledge. As such, research is ordinarily accomplished openly and without restrictions on participation or dissemination of results. Federal export control regulations, however, may require the University to obtain a license from the federal government before allowing foreign nationals to participate in research involving specific technologies or before engaging in transactions with certain persons or countries, unless an exception or exemption applies. Violations of these regulations may result in the loss of research contracts, monetary fines, and/or imprisonment. Both the University and the individuals involved may be subject to the penalties.

The University complies with all applicable United States export control laws, including the Export Administration Regulations (“EAR”) administered by the Department of Commerce, Bureau of Industry and Security (“BIS”); the International Traffic in Arms Regulations (“ITAR”) administered by the Department of State; and the foreign sanctions programs administered by the Department of Treasury through its Office of Foreign Assets Controls (“OFAC”). The purpose of this handbook is to inform University researchers of the scope of export control restrictions and to articulate procedures to ensure that the University’s research complies with these laws.

The Office of Research Oversight (“ORO”) serves as the University’s export compliance office. ORO was created, in part, to consolidate in a single office, the responsibility of providing advice, assistance, and training to the entire University community regarding compliance with export control laws and regulations as they relate to deemed exports of controlled equipment to foreign nationals on campus, physical imports and exports of equipment and materials to and from colleagues in foreign countries, and international projects and collaborations. ORO’s role is to ensure that University researchers conduct their projects in accordance with the relevant regulations. ORO will analyze the activity, determine whether a license is required, apply for relevant licenses, and conduct necessary screenings.

This handbook addresses the following topics: (I) Overview of Export Control Laws; (II) Identifying and Managing Export Control Issues in Research; and (III) Physically Exporting Materials and Equipment.
I. Overview of Export Control Laws

A. EAR and ITAR

1. EAR: The Export Administration Regulations, located in Title 15, section 730-774 of the Code of Federal Regulations, govern “dual use” technologies and products that have both military and civilian uses. Goods and services controlled under the EAR are listed on the Commerce Control List (“CCL”) and are divided into ten categories: (0) nuclear materials, facilities, and equipment; (1) materials, chemicals, microorganisms, and toxins; (2) materials processing; (3) electronics; (4) computers; (5) telecommunications and information security; (6) sensors and lasers; (7) navigation and avionics; (8) marine; and (9) propulsion systems, space vehicles and related equipment.¹ Within these categories, each item is given an Export Control Classification Number (ECCN) and reason(s) for control. Determining whether an item is restricted for export to a particular country or foreign national involves looking at the EAR’s country chart, which lists the reasons for control that apply to each country, and cross-referencing the reason(s) for control for the item in question. The EAR is administered by the U.S. Department of Commerce, Bureau of Industry and Security.

2. ITAR: The International Traffic in Arms Regulations (“ITARs”), found at 22 CFR §§ 120-130, control munitions, defense articles, and defense services that are listed on the United States Munitions List (“USML”). Most of the items and services on the USML are specifically designed or produced for defense applications and do not have predominantly civil applications. The USML covers items such as firearms; ammunition; launch vehicles, missiles, rockets, torpedoes, bombs and mines; explosives, energetic materials, propellants, and incendiary agents; vessels of war; tanks and military vehicles; aircraft; military training equipment; protective personnel equipment; military and space electronics; fire control, range finder, optical and guidance control equipment; toxicological agents; spacecraft systems; nuclear weapons design and test equipment; directed energy weapons; submersible vessels; and classified articles, technical data and defense services not otherwise enumerated. ² Unless an exemption applies, a license must be obtained before any item on the USML is exported to a foreign country or to a foreign national or before the University can undertake any work that would be considered to be the furnishing of a defense service. The ITARs are administered by the U.S. Department of State, Directorate of Defense Trade Controls.

3. “Exports” and “Deemed Exports”: Under the EAR and the ITAR, the term “export” is broadly defined. It includes: (1) an actual physical shipment or transmission of items controlled under the EAR or ITAR out of the United States; and (2) any written, oral, or visual release or disclosure of controlled technology, information, or software to a foreign national either inside or outside the United States.³ Therefore, transmissions to a foreign national within the United States – even a person working in a GU laboratory – are also covered

¹ The CCL and the EAR are available online at http://www.access.gpo.gov/bis/ear/ear_data.html.
² The USML can be found online at http://www.fas.org/spp/starwars/offdocs/itar/p121.htm.
³ 15 C.F.R. § 734.2; 22 C.F.R. § 120.17. The ITAR’s definition of an export also includes transferring registration, control or ownership to a foreign person of any aircraft, vessel, or satellite on the USML; disclosing or transferring in the U.S. any defense article to an embassy, agency, or subdivision of a foreign government; and performing a defense service on behalf of or for the benefit of a foreign person. 22 C.F.R. § 120.17.
by the export control laws and may require a license. (Such transmissions are called “deemed
exports.”) For universities, this issue of “deemed exports” arises most frequently in connection
with foreign nationals participating in research projects involving controlled technology.
Foreign nationals include anyone other than a U.S. citizen, a lawful permanent resident of the
United States (such as individuals with Green cards), or a “protected individual” under 8 U.S.C.
§ 1324b(a)(3) (such as refugees or persons seeking asylum). In addition, taking along controlled
technology (including laptops and software) during travel to a foreign country may also raise
export control issues.

4. Exemptions: Many exports and deemed exports associated with academic
research do not require government export licenses, even if they involve controlled technologies
or equipment listed on the EAR or the ITAR, because they are subject to one of three
exemptions: (a) the “fundamental research” exemption (EAR and ITAR); (b) the “publicly
available” (EAR”) or “public domain” (ITAR) exemption; and (c) the “educational information”
exemption (EAR). (Most encrypted software is not eligible for these exemptions.) Each of these
exemptions is explained in more detail below.

a. Fundamental Research Exemption

The fundamental research exemption, under both the ITAR and EAR, applies to basic
and applied research in science and engineering conducted at a university located in the United
States, where the resulting information is ordinarily published and shared broadly within the
scientific community. The exemption covers the information or outputs of the research but if
the inputs include controlled information or technology, the project may still be export
controlled. The exemption does not cover proprietary research and industrial development and
design, which are usually subject to restrictions on disclosure for proprietary and national
security reasons.

Research is not eligible for the fundamental research exemption if:

(i) The agreement with the research sponsor contains restrictions on the publication
    of the information resulting from the research, other than reasonable pre-
    publication review by the sponsor to ensure that publication would not
    inadvertently divulge proprietary information or compromise patent rights.

(ii) The research agreement contains access controls that restrict who can participate
    in the research.

Research under a U.S. government grant or contract that imposes specific national security
controls may still qualify as fundamental research under EAR (but not under ITAR) if the
university strictly complies with the controls.

For the fundamental research exemption to apply, the researchers must intend to publish
the research results, although actual publication need not occur. While the EAR and the ITAR

4 15 C.F.R. § 734.8; 22 C.F.R. § 120.11(a).
have slightly different definitions of “publish,” the term basically means that information is generally accessible to the public through publication in periodicals, books, print, electronic or any other media available for general distribution; placement in libraries open to the public; publication in patents; and releases at open conferences.

In addition, the fundamental research exemption usually does not apply to physical shipments of goods outside the United States, nor does it cover research that occurs at overseas universities.

b. Publicly Available/Public Domain Exemption

No license is required if the information is already “publicly available” (EAR) or in the “public domain” (ITAR). The EAR and the ITAR define “publicly available” and “public domain” somewhat differently. Under the EAR, “publicly available” means any information that is already published or will be published as generally accessible to the public in any form, including: (1) publication in periodicals, books, print, electronic, or other media; (2) readily availability at libraries open to the public or at university libraries; (3) patents and patent applications available at any patent office (whether in the U.S. or abroad);\(^5\) or (4) release at an open conference, meeting, seminar, or trade show (in the U.S. or abroad).\(^6\)

For this exemption to apply under the ITAR, the information must be published and generally accessible or available to the public, through one of the following methods: (1) sales at newsstands and bookstores; (2) subscriptions which are available without restriction to individuals who desire to obtain or purchase the published information; (3) libraries open to the public; (4) patents available at any patent office;\(^7\) (5) unlimited distribution at a conference, meeting, seminar, trade show, or exhibition generally accessible to the public in the United States; (6) second-class mailing privileges granted by the federal government; and (7) public release in any form after approval by the cognizant U.S. government department or agency.\(^8\)

c. Educational Information Exemption

The EAR’s “educational information” exemption covers any information released by instruction in catalog courses and associated teaching laboratories of academic institutions.\(^9\) The ITAR does not have a similar exception for information related to items listed on the USML.

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If research involves information or technology listed on the EAR or the ITAR and does not qualify for an exemption, then the University may have to apply for a license in order to involve foreign nationals present in the U.S. in the research or to transfer information abroad.

\(^5\) Only the information contained in the patent or patent applications is subject to the exemption. Changes to or applications of the technology may be subject to the export control restrictions.
\(^6\) 15 C.F.R. § 734.7.
\(^7\) See footnote 5.
\(^8\) 22 C.F.R. § 120.11
\(^9\) 15 C.F.R. § 734.9.
The University may also choose to complete the research without obtaining a license if it restricts access to the research to U.S. citizens and, in the case of technology or information listed on the CCL or USML, foreign nationals from countries not affected by the export control restrictions for the technology or information involved in that research.

B. OFAC Sanctions

The Department of Treasury’s Office of Foreign Asset Controls administers and enforces sanctions that have been imposed against specific countries based on reasons of foreign policy, national security, or international agreements. Although the list of sanctioned countries changes on occasion, sanctions are in effect for the following countries as of April 2019: the Balkans, Belarus, Burundi, the Democratic Republic of Congo, Cuba, Iran, Iraq, Lebanon, Libya, , Nicaragua, North Korea, Somalia, Sudan and Darfur, South Sudan, Syria, Ukraine-Russia, Venezuela, Yemen, and Zimbabwe. The OFAC Sanctions Program and country information is available at https://www.treasury.gov/resource-center/sanctions/programs/pages/programs.aspx. The scope of the sanctions varies depending upon the country, but they may prohibit all U.S. persons and entities from importing or exporting goods, services, or technology to or from a sanctioned country (including all people and entities located in that country) without first obtaining a license. In addition, travel to certain sanctioned countries (particularly Cuba, and North Korea) may require a license from OFAC or the U.S. Department of State.10

Unlike under the EAR and the ITAR, an item does not have to be on a particular list in order for its export to be subject to OFAC sanctions. However, if an item is on the EAR or ITAR (including widely available items – like phones and laptops – classified in the broad EAR 99), it is often automatically prohibited from being shipped or carried into into a country subject to OFAC sanctions. However, the sanctions generally do not extend to foreign nationals of sanctioned countries in the United States pursuant to a valid visa or permanent residency status – meaning that there is no “deemed export” issue.

The OFAC sanctions do have some exceptions of particular relevance to universities: the import or export of “information and informational materials” – including publications, films, posters, records, photographs, microfilms, microfiche, tapes, compact discs, CD ROMS, artworks, and news wire feeds – to or from sanctioned countries is permissible. However, information not fully in existence at the time of the transaction and/or the publication of such information may be restricted by OFAC sanctions for certain countries.

C. Prohibited Party Restrictions

Various government agencies (including OFAC, the State Department, and the Department of Commerce) maintain lists of persons and entities subject to restrictions on doing business with U.S. persons. These lists include:

- OFAC maintains a list of “specially designated nationals” (“SDNs”) who are suspected of being involved with terrorism, international drug trafficking, or the

proliferation of weapons of mass destruction. No business transactions may be conducted with individuals on this list. Most SDNs are outside the United States, though a handful of SDNs are United States citizens and/or have Social Security Numbers.\footnote{11}{The SDN list is available at: \url{http://www.treasury.gov/offices/enforcement/ofac/sdn}.}

- The Department of Commerce maintains a list of “denied persons” who have been denied export privileges, and it is illegal to enter into any transactions that would violate their denial orders.\footnote{12}{The denied persons list is available at: \url{http://www.bis.doc.gov/DPL/default.shtm}.}

- The State Department maintains a list of “debarred persons” who are barred from participating directly or indirectly in the export of defense articles, including technical data and defense services.\footnote{13}{The State Department’s debarred persons list is available at: \url{http://www.pmddtc.state.gov/debar059.htm}.}

D. Violations and Penalties

Violations of the export control laws can result in severe civil and criminal penalties for both the involved individuals and the University. For example, violations of the EAR can lead to fines of up to $250,000 and/or imprisonment for up to ten years for individuals. A University of Tennessee faculty member was convicted in 2008 for violations of the ITAR. The University of Massachusetts Lowell, was fined $100,000 in 2013 for exporting equipment to a denied party without obtaining a license. Export privileges can also be denied to individuals or entities that violate the export control restrictions.

II. Identifying and Managing Export Control Issues in Research

In conjunction with principal investigators (“PIs”), the Main Campus’ Office of Research Services (“ORS”) and the Medical Center’s Office of Sponsored Research (“OSR”) conducts a thorough review of program announcements, research grants, contracts, cooperative agreements, and subcontracts to determine the applicability of export control regulations and the exceptions thereto. This review proceeds as follows:

A. EAR/ITAR Compliance

1. ORS/OSR reviews all proposed research agreements to determine if there are any provisions that restrict access to or publication of research and technical data, e.g., references to controlled unclassified information or controlled defense information, or that limit the participation of foreign nationals in the research effort, such that an exemption to the export control regulations would not be available. If the agreement contains such restrictions, ORS/OSR may negotiate with the sponsor to attempt to remove these provisions. If such negotiation is unsuccessful, ORS/OSR refers the project to ORO which conducts, in conjunction with the PI, a review to determine whether the goods, technology or software to be used or produced pursuant to the research agreement may be subject to the EAR or the ITAR and whether a license is required to enable
foreign nationals to access these controlled materials. In addition, ORS/OSR inserts a provision into the agreement asking the sponsor to notify the PI before transmitting to the University any materials subject to export control restrictions (see Appendix A for sample agreement language).

2. If the research is not subject to an exemption and will involve export-controlled material, the matter is referred to the appropriate Executive Vice President or his designees to determine, in consultation with ORO and the Office of General Counsel (“OGC”), if the University will apply for an export control license, conduct the research under export control restrictions (i.e., without the participation of foreign nationals), or abandon the research effort due to the possible burdens or restrictions associated with compliance with these regulations.

3. If the decision is made that the University will apply for an export control license, ORO handles the application process. No work under a grant or contract can begin unless and until a license is issued. (On average, license processing takes approximately six months.)

4. If the decision is made to conduct the research under export control restrictions, ORO, in conjunction with the PI, the department chair, the University’s Information Security Officer, and OGC, develops a technology control plan for the research project. This technology control plan will include procedures for specifying which personnel are permitted to access the restricted material, restricting access to spaces where the research will be conducted and, where appropriate, limiting access to information stored in the University’s computer system, as well as storage and disposal instructions for the controlled information. Elements of technology control plans may include:

- Designation of a limited laboratory space with special access procedures where the research will be conducted.

- Establishment of logs to record access to the research space.

- Change of locks or access codes so that only authorized personnel may access the space.

- Monitoring of the identity, citizenship, and level of access of students, faculty, staff, and other individuals involved in the project or with access to the space in which the project is conduct.

- Collaborative Institutional Training Initiative (CITI) training of all members of the research team regarding export control requirements, why they apply to the project, and the need for strict compliance.

- Controls for restricting access to materials regarding the research that are placed on the University’s computer system, such as establishing a separate, password-restricted, computer, network, or database solely for the approved members of the
research team. These controls are developed in conjunction with and approved by the University’s information security officer.

- Disposal instructions to be followed at the conclusion of the project.

5. All export control decisions are documented and kept on file in ORO.

6. After an initial decision is made regarding the applicability of export controls to a research project, the PI is responsible for notifying ORO of any changes in the scope or staffing or sponsor of research projects that could alter the initial determinations about the applicability of export control regulations.

7. In subcontracts, ORS/OSR includes provisions to ensure that subcontractors comply with applicable export control regulations (see Appendix B for sample language).

B. OFAC Sanctions Compliance

1. ORS/OSR reviews all proposed research agreements sent through those offices to determine if they involve travel to, communications with, or exchange of information with any entity or individual in a country currently under OFAC sanctions. Projects that involve travel to or collaborations with an OFAC sanctioned countries are referred to ORO for review. However, University community members are encouraged to consult with ORO (or OGC, in the event that the research is not sponsored by an outside entity) as soon as possible when contemplating projects that would involve interactions with an entity or individual in a sanctioned country.

2. If the proposed research does involve interactions with a sanctioned country, ORO determines, in consultation with OGC, whether the proposed project can be conducted under the sanctions. If OFAC grants exemptions or licenses for travel to or transactions with the sanctioned country, the matter is referred by ORO to the appropriate Executive Vice President or his or her designee to determine, in consultation with ORO and OGC, if the University will apply for a license or exemption. If no license or exemption is available, or if the decision is made not to apply for one, the research effort is abandoned.

3. Researchers who are conducting projects in embargoed or sanctioned countries should also contact the ORO for guidance on whether those projects require a license or for a briefing prior to engaging in travel.

C. Compliance with Prohibited Party Restrictions

The University subscribes to the Descartes E- Customs’ Visual Compliance software to conduct restricted party screenings of subcontractors, suppliers/vendors, and consultants (“Supplier”). Suppliers undergo a restricted party screening at time of registration in the University’s Supplier Database. If a Supplier matches against the Specially Designated Nationals List, Denied Persons List, or Excluded Parties List, i.e., those Suppliers who are debarred or suspended from receiving U.S. Government funding, the University may not enter
into an agreement with that person or entity. If the initial screening is clear but the Supplier is later added to one of these lists, the University may decline execution of the agreement. Once registered in the Supplier Database, Suppliers are screened daily to determine whether they result in a positive match against any of the U.S. Government or other international watch lists. Matches are reviewed to determine whether the match is a false positive or true match. Suppliers that match against the SDN list are inactivated in the Supplier Database. Other matches are reviewed on a case by case basis.

D. H-1B Visa Extensions

The Office of Global Services is responsible for processing visa extensions for foreign nationals at the University. If the person is working on an externally funded research project at the time of visa extension, the Export Control Addendum form is completed by the PI or the department and reviewed by ORO to verify whether a license is required for the person to work (or continue to work) in their position.

III. Physically Exporting Materials and Equipment

Before sending any equipment and materials (other than publicly available publications) outside the United States, the University must determine if they are subject to U.S. export control regulations. This determination process proceeds as follows:

1. The PI or other person responsible for the equipment or materials should contact ORO. ORO will conduct a Visual Compliance screening to determine whether the intended recipient of the equipment or material is on the specially designated nationals list; if so, the University will not make the export.

2. In consultation with the PI or other responsible person, ORO determines whether the material or equipment is listed on the CCL or the USML, whether the material or equipment is being sent to a sanctioned country, and whether any other documentation is needed (such as a shipper’s export declaration). If the export is being made pursuant to a Materials Transfer Agreement, the Office of Technology Commercialization (“OTC”) will involve ORO.

3. If ORO determines that a license is required to ship the material or equipment to its intended destination, the matter is referred to the appropriate Executive Vice President or his/her designees, regarding whether the University will apply for a license or will not make the proposed shipment.

4. If the University decides to apply for a license, ORO will prepare the appropriate documents for the license. The equipment or materials may not be shipped unless and until the license is received.

5. Once a license is received or if a license is not required, ORO will work with the PI or other responsible person and other appropriate offices (such as Facilities, Environmental
Health & Safety, University Information Services, and OTC) to ship the equipment or materials safely and in compliance with all other requirements.

6. All export decisions will be documented, and ORO will retain copies of the decisions.

7. If the proposed export is of equipment with an original acquisition cost greater than $2,500, the PI or other responsible person must also complete an “Equipment Transfer and Proposal Form” and submit it to the Office of Property Accounting.

IV. Physically Importing Materials and Equipment

Before importing any equipment and materials (other than publicly available information and publications) from embargoed or sanctioned countries, the University must determine if they are subject to OFAC sanctions. This determination process proceeds as follows:

1. The PI or other person requesting the import should contact ORO. If ORO determines that a license is required to ship the material or equipment to the University, the matter is referred to the appropriate Executive Vice President or his/her designees regarding whether the University will apply for a license or will not permit the proposed import.

2. If the University decides to apply for a license, ORO will prepare the appropriate documents for the license. The equipment or materials may not be shipped to the University unless and until the license is received.

3. Once a license is received or if a license is not required, ORO will work with the PI or other responsible person and other appropriate offices (such as Facilities, Environmental Health & Safety, University Information Services, and OTC) to ship the equipment or materials safely to the University and in compliance with all other requirements.

4. All import decisions will be documented, and ORO will retain copies of the decisions.

5. If the proposed import is of equipment with an original acquisition cost greater than $2500, the PI or other responsible person must also complete an “Equipment Transfer and Proposal Form” and submit it to the Office of Property Accounting.

V. Travel to Embargoed or Sanctioned Countries with University Information or Equipment

Faculty and staff who are planning to travel to foreign countries must be aware that traveling with University information or equipment, e.g., laptop computers with encryption software, etc., is considered an export and may be subject to restrictions or require a license in certain countries. Before traveling, please consult with ORO to ensure that your information is publicly available, in the public domain, is educational information, or qualifies for the fundamental research exemption. Information that is controlled or proprietary or subject to a non-disclosure or confidentiality agreement must be removed from your devices. Please ensure
that your University issued devices are free of proprietary information, special software, or high levels of encryption that may require a license for export.

Two license exceptions are available in certain (but not all) circumstances, as follows:

1) Temporary Export (TMP) for University equipment that contains only commercially available software and is considered to be a necessary “tool of the trade” for University business such as conferences, research, etc. Note that most encryption technology is not eligible for this license exception.

2) Baggage (BAG) Exception for personal or family owned baggage such as laptops and cell phones for personal use during travel.

VI. Additional Export Control and International Project Assistance

In addition to the duties of ORO described elsewhere in this Handbook, ORO will perform the following activities in support of researchers and their export controlled and international projects:

• Review of the export control regulations to determine
  o whether proposed projects of University personnel or its consultants or subcontractors in foreign countries require a license;
  o whether collaborators, e.g., individuals and organizations in foreign countries, are legally permitted to provide services to the University or receive services or payments from the University; or
  o whether University issued equipment may be exported to the country in which the international project is taking place.

• Perform restricted party screenings of individuals in foreign countries who are providing an on-the-spot services for payment of $599 or less to University researchers who are conducting research in foreign countries. Note that these service providers are not required to register in the University’s Supplier Database so they are not automatically screened.

• Provide guidance and briefings related to countries that are heavily embargoed, e.g., Cuba, Iran, North Korea, Sudan, and Syria.

VII. Training

Training is available through the Collaborative Institutional Training Initiative’s (CITI) Export Control module. Faculty and staff may self-register at https://www.citiprogram.org/index.cfm?pageID=14&message=64. Training is also available through periodic workshops delivered by ORO or upon request.
Appendix A – Sample Export Control Language for Research Grants and Contracts

The University is subject to United States laws and regulations controlling the export of goods, technology, software and services, including the International Traffic in Arms Regulations, the Export Administration Regulations, and the sanctions regulations administered by the Office of Foreign Asset Controls of the U.S. Department of Treasury. The University’s obligations hereunder are subject to compliance with these laws. Sponsor agrees to notify the University before Sponsor sends the University any export-controlled information. Such notification will include an identification of any information that is export controlled, the classification of such export controlled information, and an identification of any restrictions on the disclosure or use of such export controlled information. University reserves the right to decline the receipt of any information that is export controlled and to terminate this Agreement in the event that the research specified therein cannot be performed without the export-controlled information. If Sponsor fails to notify University of Sponsor export-controlled information in accordance with this Section and an agency of the U.S. Government imposes a fine or penalty upon the University because University has disclosed or used such information in violation of applicable law, Sponsor will indemnify University and hold it harmless from such fine or penalty.
Appendix B – Sample Export Control Language for Research Subcontracts

Subcontractor agrees to comply with all applicable United States laws and regulations controlling the export of goods, technology, software and services, including the International Traffic in Arms Regulations, the Export Administration Regulations, and the sanctions regulations administered by the Office of Foreign Asset Controls of the U.S. Department of Treasury. The transfer of goods, technology, software, and services, including technical data to a foreign person, either inside or outside the U.S., may require a license from a U.S. government agency, unless an exemption is available. Subcontractor acknowledges that it will take all necessary steps to comply with export control regulations, including obtaining export licenses if necessary.

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