INTRODUCTION

The University of Alabama at Birmingham (hereafter referred to as the University or UAB) conducts multi-disciplinary cutting-edge research in a globalized environment for the public good. As part of its mission, the University continues to expand its research and other collaborative efforts with foreign countries and their citizens. The University also conducts research and commercial collaborations with industry and the federal government. All such activities may be subject to federal regulations covering certain exports with destinations and persons outside of the United States. In some cases, these regulations also apply to non-U.S. citizens at the University and within the United States. For reasons of national security and trade protection, the United States has enacted export control laws to govern the transfer of certain information, items, and technologies to foreign countries and foreign persons. These laws further apply to items that have a military application, as well as to commercial items that may have a potential military application or pose a foreign policy or national security concern. Export Control laws and regulations include, but are not limited to, the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), and the sanctions and requirements of the Office of Foreign Assets Control (OFAC).

UAB seeks to comply with applicable export control regulations in all University activities to further the creation and dissemination of knowledge for the public good while simultaneously protecting national security, align with current foreign policies, and protecting the U.S. economy and commerce.

PURPOSE

The purpose of this policy is to outline the fundamental aspects of export control by examining the relationships of export control regulations to specific activities conducted at the University and explain how the University will assist personnel to comply with such export control regulations.

APPLICABILITY

This policy applies to all University personnel including faculty, staff, student employees, research associates and fellows, postdoctoral fellows and trainees, students, visitors, volunteers, and all other persons studying or working at the University (including international visiting scholars and scientists) or with whom the University has contracted to teach, conduct research, or provide or receive service activities at, for, or on behalf of the University.
DEFINITIONS

For purposes of this policy, the following definitions apply:

**Controlled Exports:** Specific types of exports regulated by the federal government (e.g., commodity, biologics, equipment, software, encryption, technology, or technical information) sent from the U.S. to a foreign person or destination.

**Deemed Export:** The release, disclosure, or transmission of controlled exports to any foreign person in the U.S. Such a release of information is considered to be an export to the foreign national’s home country or country of current citizenship.

**Exports (noun):** Goods or services transferred across national borders for the purpose of selling or realizing foreign exchange.

**Export (verb):** Transferring items physically from the U.S. to a foreign country (e.g., actual shipment of goods or carried during international travel, as well as when information is transmitted to a person or entity in a foreign country, whether in writing, email, phone, fax, internet, or conversations.

**Export License:** A written authorization provided by the appropriate regulatory authority detailing the specific terms and conditions allowing the export or re-export of controlled exports.

**Export License Exception:** A written authorization provided by the appropriate regulatory authority allowing the export or re-export of controlled exports that would normally require an export license.

**Re-export:** The act of transferring any controlled export (see definition above) from one foreign country to another foreign country, or when technology is released in one foreign country to another foreign country (or a national of another foreign country).

**Dual Use:** A commercial item which also has a potential military application or raises a national security concern.

**Educational Information:** Information that is normally released by instruction in catalog courses and associated teaching laboratories of academic institutions. Educational information is generally not subject to export controls.

**Empowered Official:** A U.S. person who is directly employed by the organization and legally empowered in writing to sign export license applications or other requests for approval on behalf of the organization. An empowered official understands the provisions and requirements of export control laws and regulations and the civil liability, criminal liability, and administrative penalties for violating export control laws and regulations. Exports and re-exports of items and services for military use, which include defense articles and technical data, defense technologies, and defense services. These regulations are under the jurisdiction of the U.S. Department of Defense. (22 CFR Parts 120-130).
**EAR (Export Administration Regulations):** Regulations governing the export, including deemed export and re-export of dual-use commercial items and technologies and other commercial items and technologies without an obvious military use. These regulations are under the jurisdiction of the U.S. Department of Commerce. (15 CFR Parts 730-774).

**OFAC (Office of Foreign Assets Control):** The federal government office responsible for administering and enforcing foreign asset control regulations. This includes economic and trade sanctions based on federal foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction. The regulations administered by OFAC include controls with regard to specific individuals, specific organizations, and certain countries. OFAC is under the jurisdiction of the U.S. Department of the Treasury. (31 CFR Parts 500-598).

**Defense Article:** Any item or technical data designated in the United States Munitions List (see 22 C.F.R. §121.1). It does not include basic marketing information on function or purpose or general system descriptions. See 22 C.F.R. §120.6 “Defense Article.”

**Export Control Exemption and/or Exclusion:** Specific, legally-recognized contexts in which export control regulations are inapplicable to the transmission of information, e.g., fundamental research, public domain/publicly available information, educational information, and disclosures to bona-fide full-time employees (ITAR exemption only).

**Fundamental Research:** As defined under the ITAR: Any “basic and applied research in science and engineering, the results of which are ordinarily published and shared broadly within the scientific community.” As defined under the EAR: Any "research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.” Information that results from Fundamental Research is not subject to export control regulations under the Fundamental Research Exclusion. Research that contains publication restrictions or that contains access or dissemination restrictions does not qualify as Fundamental Research.

**Public Domain:** Information is published in and that is generally accessible or available to the public: 1) through sales at newsstands and bookstores; 2) through subscriptions which are available without restriction to any individual who desires to obtain or purchase the published information; 3) through second class mailing privileges granted by the U.S. Government; 4) at libraries open to the public or from which the public can obtain documents; 5) through patents available at any patent office; 6) through unlimited distribution at a conference, meeting, seminar, trade show or exhibition, generally accessible to the public, in the United States; 7) through public release (i.e., unlimited distribution) in any form (e.g., not necessarily in published form) after approval by the cognizant federal government department or agency; and 8) through fundamental research.

**Disclosures to Bona-Fide Full-Time Employees:** Recognized exemption permitting the disclosure of unclassified technical data in the United States by U.S. universities to foreign nationals where: 1) the foreign national is the University’s bona fide full-time regular employee; 2) the employee’s permanent abode throughout the period of employment is in the United States; 3) the employee is not a national of an embargoed country; and 4) the University informs the
employee in writing that information disclosed may not be disclosed to other foreign nationals without prior written governmental approval.

**University Personnel:** Faculty, staff, student employees, research associates and fellows, post-doctoral fellows, students, visitors, volunteers, and all other persons studying or working at the University (including international visiting scholars and scientists), or with whom the University has contracted to teach, conduct research, or provide or receive service activities at, for, or on behalf of the University.

**U.S. Person or Entity:** Anyone who is a U.S. citizen, a lawful permanent resident of the U.S., or has refugee or asylum status in the U.S., wherever that person is located. Also includes U.S. incorporated or organized firms and their foreign branches.

**Foreign Person or Entity:** Anyone who is not a U.S. person (see definition above). Any foreign corporation, business association, partnership, trust, society, or any other foreign entity or group as well as international organizations and foreign governments.

**Foreign National:** Any person who is not a citizen of the host country in which they are residing.

**In-Country Transfer:** The transfer of an item or information to a person or entity named on the Entity List maintained by the Bureau of Industry and Security in the U.S. Department of Commerce that occurs outside of the United States in a single foreign country.

**Item(s):** Any material, technology, equipment, technical data, software, source code, or commodity, and any information useful to, or used for, the development, production, or use of any material, technology, equipment, technical data, software, source code, or commodity.

**Sanctioned or Embargoed Country:** Certain individuals, entities, and countries with whom the U.S. government actively restricts U.S. persons or entities from conducting interactions for a variety of reasons.

The following departments all maintain and enforce separate blocked and sanctioned lists:

- Department of Commerce, see Export Administration Regulations, 15 C.F.R. §746 “Embargoes and other Special Controls”;
- Department of State, see International Traffic in Arms Regulations, 22 C.F.R. §126.1; and
- Department of the Treasury (see Office of Foreign Assets Control sanctions information.)

**Sanctioned Transaction(s):** Exporting 1) to or within a sanctioned or embargoed country, or 2) to entities or individuals from a sanctioned or embargoed country.

**Prohibited Party:** An individual or entity who is on one of the lists published by the Departments of Commerce, State, or Treasury.
Technology Control Plan: University document coordinated by the Director of Export Control and International Compliance that outlines the physical, informational, and personnel security measures required to safeguard controlled exports.

POLICY STATEMENT

All University personnel are required to comply with the export control laws and regulations that govern the transfer of export-controlled items to foreign countries and foreign nationals.

Generally, an export license from the U.S. Department of Commerce or the U.S. Department of State is required before a foreign national may be given access to an export-controlled item or before an export-controlled item may be transferred to a foreign country. In certain instances, however, an export license exception/exemption is available. In other situations, a proposed disclosure or transfer may be prohibited altogether.

POLICY SCOPE

Export control laws and regulations apply when an export, re-export, deemed export, or in-country transfer occurs. Examples of activities that may implicate export control laws and regulations and therefore require close review, prior to commencement, include, but are not limited to, any of the following activities:

- engaging in activities or research in controlled areas (e.g., encryption technology in source code or object code, nuclear technology, military technologies, and chemical/biological weapons);
- engaging in activities including sharing, shipping, transmitting, or transferring any item, information, or software that will support the research, design, development, production, stockpiling, or use of nuclear technology, chemical/biological weapons, or missiles;
- engaging in research sponsored by any entity that restricts publication or participation by foreign nationals;
- receiving and/or using export-controlled information or technologies obtained from other parties;
- shipping or taking equipment, technology, or software outside of the United States;
- traveling or working outside the United States;
- collaborating with foreign nationals on research projects, education programs, and other services, whether within the United States or abroad;
- performing works for hire, including testing services, educational services, laboratories, departmental units, etc.;
- hosting foreign national visitors funded by themselves or their home country governments; and
- training foreign nationals.

Export control laws and regulations generally do not apply to research, teaching, and service activities conducted by University personnel in the United States when the item: 1) is already in the public domain or otherwise publicly available; 2) is educational information; 3) forms a part of fundamental research, or, for ITAR regulated-unclassified technical data only, is disclosed to a
bona-fide, full-time employee (see definition of Export Control Exemption and/or Exclusion above).

To be exempt and/or excluded from export control laws and regulations, research must be conducted free of any publication restrictions or access or dissemination controls (see definition of Fundamental Research above). UAB is committed to accomplishing teaching, research, and service openly and without prohibitions or restrictions on the publication and dissemination of the results of academic and research activities. Any restriction on the publication of the scientific and technical information resulting from research, other than: 1) limited pre-publication reviews by research sponsors or Harbert Institute for Innovation and Entrepreneurship (HIIE) licensees to prevent inadvertent disclosure of proprietary information provided by the research sponsor or a UAB Research Foundation (UABRF) licensee to ensure that publication will not compromise intellectual property rights of the research sponsor or a HIIE licensee; or 2) specific access and dissemination controls when the federal government is sponsoring the research, will subject the activity to export control requirements.

**FEDERAL ADMINISTRATION**

The Departments of Commerce, State, and the Treasury are the principal administrative branches of the U.S. government involved in the oversight and enforcement of export control regulations.

- The Department of Commerce, through the Bureau of Industry and Security, administers the Export Administration Regulations controlling the export of dual-use items (i.e., items having both commercial and military applications) as well as strictly commercial items.
- The Department of State, through the Directorate of Defense Trade Controls, administers the International Traffic in Arms Regulations controlling the export of items developed primarily for military or space applications.
- The Department of the Treasury, through the Office of Foreign Assets Control, enforces specific embargoes and/or sanctions.

**COMPLIANCE AND DISCIPLINARY ACTION**

All University personnel are personally responsible for safeguarding export-controlled items from disclosure to foreign nationals. As such, it is the responsibility of University personnel to be aware of and comply with export control laws and regulations, as well as applicable University policies and procedures. It is important to note that the primary compliance responsibility resides with the University personnel receiving, using, and/or transferring the export-controlled item to a foreign destination or foreign national. In the case of research, the principal investigator is primarily responsible. In any context, the University will assist University personnel in assessing their export control obligations and will facilitate the acquisition of export licenses as required. Therefore, the appropriate administrative staff (e.g., sponsored program officer, departmental business officer, etc.) should be notified by the principal investigator(s) whenever it is believed or known that export controls apply.

The **UAB Export Control Program** is sponsored through the Office of Responsible Research Practices and provides support and procedures for investigators/research administrator as well as
guidance for human resources-related and international travel-related export control matters. The program may be contacted at exportcontrol@uab.edu.

Failure to comply with export control laws and regulations may result in substantial civil and criminal penalties assessed against both the specific individual(s) involved and the University, as well as administrative sanctions resulting in potential loss of federal funding and export privileges to the specific individual(s) and the University. In addition, failure to comply with this policy may result in disciplinary action, up to and including termination of employment, enrollment in an academic program, or other affiliation with the University.

IMPLEMENTATION

Implementation of this policy is the responsibility of the University’s designated Empowered Official, appointed by the President.